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TITLE 7—AGRICULTURE

Chapter 1—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

Subchapter B—Marketing of Perishable Agricultural Commodities

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE UNDER PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930, AS AMENDED)

ARREARAGE FEES

Section 46.14 *Arrearage fees* of the existing regulations (7 CFR 46.1-46.28), issued pursuant to the authority contained in the Perishable Agricultural Commodities Act, 1930 (46 Stat. 531 et seq., as amended; 7 U. S. C. 499 et seq.), is hereby revoked. The revocation is made because it is found that the provisions set forth therein are not in accordance with the increase of license fee contained in the amendment of § 46.6 *License fee* as published in the FEDERAL REGISTER January 23, 1957. Also, it is found that the provisions are not necessary in administering the act since they are covered by the provisions set forth in § 46.10, as well as section 3 (a) of the act. It is hereby further found and determined that good cause exists for not postponing the effective date of this revocation later than the date of publication in the FEDERAL REGISTER, in that: (1) Provisions set forth in § 46.14 are not necessary in administering the act, (2) settlement of a liability of accrued fees due for the period business was conducted subject to the act prior to filing an application for license is covered by the provisions of § 46.10, as well as, section 3 (a) of the act; and (3) the persons affected need no additional advance time for compliance with this revocation (60 Stat. 238; 5 U. S. C. 1003c).

(Sec. 15, 46 Stat. 537, as amended; 7 U. S. C. 499c)

Dated: October 3, 1958, to become effective on date of publication in FEDERAL REGISTER.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Agricultural Marketing Service.

[P. R. Doc. 58-8359; Filed, Oct. 8, 1958;
8:51 a. m.]

Subchapter E—Warehouse Regulations

PART 101—COTTON WAREHOUSES

MISCELLANEOUS AMENDMENTS

On August 16, 1958, there was published in the FEDERAL REGISTER (23 F. R. 8324) a notice of proposed amendments of the regulations relating to cotton warehouses (7 CFR Part 101, as amended) under the United States Warehouse Act as amended (7 U. S. C. 241 et seq.). After due consideration of all relevant matters presented and under the authority of section 28 of said Act (7 U. S. C. 268), said regulations are hereby amended as follows:

1. Amend § 101.2 by adding the following new definition:

(w) *Board of Cotton Examiners.* A board of cotton examiners properly qualified and designated as such under the regulations (Part 28 of this chapter) under the United States Cotton Standards Act.

2. Amend § 101.16 (a) by changing subparagraphs (6) and (8) and adding a new subparagraph (9) therein, to read, respectively:

(6) A statement, conspicuously placed, whether or not the cotton is insured, and, if insured, to what extent, by the warehouseman, against loss or damage by fire, lightning and other risks;

(8) A blank space designated for the purpose in which the grade and/or other classification may be stated; and

(9) A statement to the effect that the weight was determined by a weigher licensed under the United States Warehouse Act.

3. Amend § 101.16 (c) and (d) to read, respectively:

(c) Every negotiable receipt issued for cotton stored in a licensed warehouse shall, in addition to complying with paragraphs (a) and (b) of this section, embody within its written or printed terms the following: (1) If the cotton covered by such receipt was classified by a licensed classifier or a board of cotton examiners, a statement to that effect, and (2) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on, the cotton covered by the receipt.

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(d) Whenever the grade or other class of the cotton is stated in a receipt issued for cotton stored in a licensed warehouse, such grade or other class shall be determined by a licensed classifier or a board of cotton examiners upon the basis of a sample drawn in accordance with § 101.71, and shall be stated in the receipt in accordance with §§ 101.68 to 101.74.

4. Amend § 101.23 (a) and (b) by substituting for the phrase "and/or flood", wherever it occurs therein, the phrase "and other risks".

5. Amend § 101.38 by changing the first sentence to read: "All cotton, before being stored in a licensed warehouse, shall be weighed at the warehouse by a licensed weigher, and the weight so determined shall be stated on the warehouse receipt."

6. Amend § 101.47 by adding at the end thereof the following: "The licensed warehouseman shall also keep a copy of each Form A memorandum and Form C certificate issued by a board of cotton examiners which forms a basis of any receipt issued by the warehouseman. All certificates and memorandums within this section shall be retained in the records of the licensed warehouseman for a period of one year from the date of their issuance and thereafter until the receipts based on such certificates have been surrendered and cancelled."

7. Amend § 101.48 by inserting in the first sentence the phrase "or to be stored" before the phrase "in the licensed warehouse" and by deleting the word "sole" from the third sentence.

8. Amend the first and second sentences in § 101.49 to read, respectively: "All samples drawn from cotton in the custody of a licensed warehouseman for storage in a licensed warehouse shall be drawn by licensed samplers in the employ of the licensed warehouseman and at his direction and under his supervision, except when they are drawn as provided in § 101.79 or are drawn by or under the direction of a cotton exchange inspection agency in accordance with the regulations in Part 27 of this chapter under the cotton futures legislation (26 U. S. C. 4851 et seq.) or are drawn under the supervision of a Cotton Division employee in accordance with the regulations in Part 28 of this chapter under the United States Cotton Standards Act (7 U. S. C. 51 et seq.). Each sample shall be appropriately marked to show the tag number of the bale of cotton from which it was drawn and the date of sampling."

9. Amend § 101.57 to read:

§ 101.57 *Duties of sampler, classifier and weigher.* Each licensed classifier or weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, classify or weigh and certificate the class or weight, respectively, of cotton stored or to be stored in a licensed warehouse to which his license applies, if such cotton is offered to him under such conditions as permit the proper performance of such functions; except that no class or weight certificate need be issued when the class or weight so determined is entered on a receipt by the licensed classifier or weigher making the determination thereof. Each licensed sampler

shall sample cotton stored or to be stored in a licensed warehouse for which he holds a license, in accordance with § 101.48. Each licensed sampler, classifier, and weigher shall give preference to persons who request his services as such over persons who request his services in any other capacity. No class or weight certificate shall be issued under the act for cotton not in the custody of a licensed warehouseman for purposes of storage in a licensed warehouse, nor shall cotton not in the custody of such a warehouseman for such purpose be sampled by a licensed sampler acting as such.

10. Amend § 101.58 (b) to read:

(b) Form A memorandums and Form C certificates issued by a board of cotton examiners and class certificates issued by licensed classifiers under the United States Cotton Standards Act (7 U. S. C. 51 et seq.) shall be deemed sufficient for the purposes of the United States Warehouse Act and the regulations in this part, if the samples on which they are based were drawn in accordance with applicable requirements of § 101.71, and, in case of a class certificate issued by such a licensed classifier, if the classifier holds an unsuspended and unrevoked license under each of said acts.

11. Amend § 101.70 (b), (c) (5) and (7) to read, respectively:

(b) If cotton be reduced in value, by reason of the presence of extraneous matter of any character or irregularities or defects, below its grade or below its apparent length of staple according to the official cotton standards of the United States, the grade or length of staple from which it is so reduced, and the grade or length of staple to which it is so reduced, and the quality or condition which so reduces its value shall be determined and stated.

(c) * * *

(5) *Repacked cotton.* Cotton that is composed of factors', brokers', or other samples, or of loose or miscellaneous lots collected and rebaled, or cotton in a bale which is composed of cotton from two or more smaller bales or parts of bales.

(7) *Mixed packed cotton.* Cotton in a bale which, in the samples drawn therefrom, shows (i) a difference of three or more grades, or (ii) a difference of three or more color gradations, or (iii) a difference of two or more grades and two or more color gradations, or (iv) a difference in length of staple of one-eighth inch or more.

12. Amend § 101.71 by inserting, after the word "classifier," the phrase "or board of cotton examiners," and by adding the following sentence at the end of the section: "Samples submitted to a board of cotton examiners for issuance of Form A memorandums and samples upon which classification is to be determined by licensed classifiers for purposes of the Act and the regulations in this part shall be drawn by samplers licensed under the Act and said regulations and in accordance with § 101.72."

13. Amend § 101.72 to read:

§ 101.72 *Samples.* Each sample shall be approximately 6 ounces in weight,

not less than 3 ounces of which are to be drawn from each side of the bale. Each sample must be representative of the bale from which drawn. Samples shall not be dressed or trimmed and shall be carefully handled in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their representative character. Any sample which does not meet these requirements may be rejected.

14. Amend § 101.73 to read:

§ 101.73 *Lower grade (of two samples) to determine classification.* If a sample drawn from one portion of a bale is lower in grade or shorter in length than one drawn from another portion of such bale, the classification of the bale shall be that of the sample showing the lower grade or shorter length.

15. Amend § 101.79 (b) by changing the second sentence to read: "Such samples shall be drawn in accordance with § 101.72."

Present regulations for cotton warehouses under the United States Warehouse Act do not require that the weight, grade or other class stated on a licensed warehouse receipt be established by a weigher or classifier licensed under the act. Custom with respect to weighing the classification of cotton has changed. Weights in practically all instances are determined by weighers licensed under the act, and where grade or other class of cotton is stated on a warehouse receipt such grade or class is customarily established by a classifier licensed under the act or a U. S. Department of Agriculture board of cotton examiners. The primary purpose of the amendments stated above is to establish better control over the weighing and classification of cotton stored in licensed warehouses in view of this change in trade practices. Other minor changes are also made as indicated above.

(Sec. 28, 39 Stat. 490; 7 U. S. C. 268)

The foregoing amendments shall become effective on November 10, 1958.

Done at Washington, D. C., this 6th day of October 1958.

[SEAL] GEORGE A. DICE,
Director,
Special Services Division,
Agricultural Marketing Service.

[F. R. Doc. 58-8360; Filed, Oct. 8, 1958; 8:51 a. m.]

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

Subchapter G—Determination of Proportionate Shares

[Sugar Determination 850.89]

PART 850—DOMESTIC BEET SUGAR PRODUCING AREA

PROPORTIONATE SHARES FOR FARMS; 1959 CROP

Pursuant to the provisions of section 302 of the Sugar Act of 1948, as amended (hereinafter referred to as "act"), the following determination is hereby issued:

§ 850.99 Proportionate shares for farms in the domestic beet sugar area—
(a) **Definitions.** For the purpose of this section, the terms:

(1) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has been delegated, or to whom authority may hereafter be delegated to act in his stead.

(2) "Deputy Administrator" means the Deputy Administrator, Production Adjustment, Commodity Stabilization Service, U. S. Department of Agriculture.

(3) "Director" means the Director of the Sugar Division, Commodity Stabilization Service, U. S. Department of Agriculture.

(4) "State Committee" means the persons in a State designated by the Secretary of Agriculture as the Agricultural Conservation and Stabilization State Committee, under section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended.

(5) "County Committee" means the persons elected within a county as the county committee pursuant to regulations governing the selection and function of Agricultural Stabilization and Conservation county and community committees under section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended.

(6) "Operator" means the person who controls and directs the operations on the farm.

(7) "Farm" shall have the meaning set forth in Part 822 of this chapter.

(8) "Producer" shall have the meaning set forth in section 101 (k) of the act.

(9) "Old Producer" means the operator of a farm for which a 1959-crop base is established pursuant to paragraph (i) of this section.

(10) "New Producer" means the operator of a farm for which a 1959-crop base may not be established pursuant to the provisions of paragraph (i) of this section, or if the context indicates, the term "new producer" shall have the meaning which has been applied under the previous years' proportionate share determinations referred to in the text.

(11) "Accredited Acreage" for any crop year means the proportionate share acreage of sugar beets which was either harvested for the extraction of sugar or liquid sugar or was abandoned (bona fide) because of drought, flood, storm, freeze, disease, or insects, plus any prevented acreage approved for the farm or recorded for the proportionate share area, as the case may be, in accordance with Part 849 of this chapter (23 F. R. 7286).

(b) (1) **National acreage and State acreage allocations.** A national acreage limitation for 1959-crop sugar beets of 925,000 acres is hereby established and allocated as follows:

State:	Acres
California	201,119
Colorado	144,538
Idaho	87,914
Illinois	1,978
Indiana	41
Iowa	1,346
Kansas	7,958

State—Continued	Acres
Michigan	78,185
Minnesota	74,114
Montana	56,470
Nebraska	64,088
Nevada	550
New Mexico	778
North Dakota	38,637
Ohio	22,193
Oregon	19,555
South Dakota	5,970
Texas	1,781
Utah	33,963
Washington	34,138
Wisconsin	8,634
Wyoming	38,552
Reserve	2,500
Total	925,000

(2) Acreage within the reserve of 2,500 acres may be allocated by the Director to States not listed in this paragraph for the purpose of establishing proportionate shares for new producers in such States; if necessary to provide acreage for increases in proportionate shares granted by the Director in accordance with paragraph (c) of this section; to provide additional acreage to any State listed above which the Director determines is required, in accordance with the objectives of the act, to offset the loss of sugar beet production resulting from urbanization or the transfer of land to any Federal or State agency, or county, township, municipality or instrumentality thereof, or public or private association or corporation having a right of eminent domain; to provide acreage, in accordance with the provisions of the act, for other unforeseen contingencies; and to provide acreage for establishing a proportionate share for any farm operator whose sugar beet operations in the period 1950-58 were seriously affected by drought, storm, flood, freeze, disease, insects or other similar abnormal and uncontrollable conditions, whose operations were conducted in a local producing area in which there was serious and general crop damage in such period due to one or more of such conditions and who, primarily because of such damage, undertakes in another State to continue sugar beet production and applies to the State Committee of such other State on or before February 13, 1959, for a farm proportionate share. For each such farm operator, the State Committee shall compute a share in accordance with paragraph (i) of this section, on the basis of the accredited acreage record of the land formerly operated by such producer or his personal accredited acreage record or combination thereof as obtained from the State Committee of the State wherein he formerly operated. As soon as practicable, the State Committee shall furnish the Director a statement showing such computation and recommending action for his consideration in allocating acreage from the reserve for a proportionate share for such operator.

(c) **Instructions and forms.** The Director shall cause to be prepared for issuance to the State Committees such forms and internal management instructions as are necessary for carrying out the regulations of this section. Such instructions shall be approved and issued by the Deputy Administrator.

(d) **Proportionate shares.** The proportionate share of the 1959 crop of sugar beets for a farm shall be the acres established for the farm pursuant to this section within the allocation provided under paragraph (b) of this section for the State in which the farm is located, as determined in accordance with Part 842 of this chapter (23 F. R. 6784).

(e) **Administration of proportionate share program.** In each State, the State Committee shall establish individual farm proportionate shares in accordance with the provisions of this section. In carrying out the proportionate share program within the State, the State Committee may utilize the services and facilities of Agricultural Stabilization and Conservation county committees and offices and may cooperate with advisory committees consisting of sugar beet growers, representatives of sugar beet grower associations, representatives of sugar beet processors or combinations of these groups. The State Committee shall formulate the standards and procedures in written form for establishing proportionate shares within the State in accordance with the provisions of this section. Such standards and procedures shall be reviewed by the Director for conformity with the provisions of this section and to assure reasonable uniformity between adjoining areas in adjacent States, shall be subject to the approval of the Director, and shall be available for public inspection in State and county offices. The basic standards and procedures for each State shall become effective when published in the FEDERAL REGISTER.

(f) **Requests for proportionate shares.** Except as hereinafter provided, any operator of a farm for the 1959-crop season desiring a proportionate share shall file a written request therefor with the local Agricultural Stabilization and Conservation county office on or before the closing date set forth below for the State. Each request shall specify the location of the land and identity of the farm, and shall include a statement that the person signing the request will be the operator of the farm at the time of planting 1959-crop sugar beets thereon, and the name of the owner or lessor of the land comprising the farm, if different from the operator thereof. Where the operator of a 1959-crop farm, or the specific land to be included in a 1959-crop farm may be unknown before such closing date, the owner of a farm, or a prospective farm operator may file a preliminary request which shall serve as the basis for computing a tentative proportionate share pursuant to paragraph (i) or (j) of this section, pending the filing of a completed request for a farm proportionate share in full detail within 60 days following such closing date or such later date established as hereinafter provided. The computation of a tentative proportionate share as aforesaid shall not constitute the establishment of a proportionate share for a farm, but will merely serve as a representation that a farm proportionate share may be established upon the filing of a fully completed request for a farm proportionate share in the time and in the manner as provided above in this para-

graph. A request form may be obtained from local Agricultural Stabilization and Conservation county offices, from fieldmen of sugar companies or from such other source as the State Committee may designate. The State Committee shall publicize directions for filing such requests. To assure consideration in the initial distribution of acreage pursuant to paragraph (i) or (j) of this section, a request shall be filed on or before the effective closing date: *Provided*, That a request may be accepted after the effective date for consideration with respect to available acreage, if the State Committee determines that the person desiring a share was prevented from filing before such date because of absence, illness or other reason beyond his control: *And provided further*, That requests may be accepted generally by the State Committee after such date if the total acreage covered by bona fide requests filed by such date by old producers is less than the acreage available for distribution to old producers, or if acreage is available within the area allotment, as established pursuant to paragraph (h) of this section:

State:	Date
California:	
Northern Area	Oct. 31, 1958
Imperial Area	Mar. 27, 1959
Colorado	Jan. 30, 1959
Idaho	Jan. 16, 1959
Illinois	Mar. 13, 1959
Indiana	Mar. 13, 1959
Iowa	Feb. 27, 1959
Kansas	Jan. 30, 1959
Michigan	Feb. 13, 1959
Minnesota	Jan. 30, 1959
Montana	Jan. 30, 1959
Nebraska	Jan. 30, 1959
Nevada	Feb. 13, 1959
New Mexico	Feb. 13, 1959
North Dakota	Jan. 30, 1959
Ohio	Jan. 30, 1959
Oregon	Jan. 16, 1959
South Dakota	Feb. 13, 1959
Texas	Jan. 23, 1959
Utah	Jan. 30, 1959
Washington	Dec. 12, 1958
Wisconsin	Feb. 13, 1959
Wyoming	Jan. 30, 1959

(g) *Set-aside acreage for new producers, appeals, and adjustments.* Not less than one percent of the State acreage allocation shall be set aside for establishing proportionate shares for farms operated by new producers, except that such set-aside may be reduced by not more than one-half of one percent of such allocation if the entire acreage involved in such reduction is set aside and used to increase the proportionate shares for farms with small shares (small producers) in accordance with paragraph (i) (4) of this section. Not less than one percent shall be set aside for adjustments under appeals. Any acreage required to supplement the acreage available from initial proportionate shares in excess of requested acreages in making adjustments in initial proportionate shares pursuant to paragraph (i) (4) of this section may also be set aside.

(h) *Subdivision of State acreage allocation.* Before establishing individual farm proportionate shares, the State Committee may subdivide the State acreage allocation into allotments for areas within the State, such as an area served by a beet sugar company, a coun-

ty, or a group of counties. In making any such subdivision, a formula, approved by the Director, shall be used to provide consideration of past production of sugar beets, as measured by the average accredited acreage of the area for three or four of the crop years 1955 through 1958, and of ability to produce sugar beets, as measured by the accredited acreage of the area for one or more of the crop years used in measuring past production. If the State acreage allocation is not subdivided, proportionate shares will be established directly from such allocation and the State shall be deemed to be one allotment area. Subject to the provisions of paragraph (k) of this section, unused acreage in any area may be reallocated by the State Committee among other areas within the State.

(i) *Establishment of individual proportionate shares for old-producer farms—*

(1) *General.* In establishing proportionate shares for individual farms from area allotments, the State Committee shall consider the factors of past production of sugar beets and ability to produce sugar beets. These factors shall be measured as hereinafter provided in this paragraph by reference to the sugar beet accredited acreage record for the farm, or if the farm operator is a tenant in an area where sugar beet production is organized around tenant-operators rather than around units of land, they may be measured by reference to the personal sugar beet accredited acreage record of the farm operator within the State or allotment area, as specified in the procedure formulated by the State Committee, or they may be measured by a combination of such personal and farm records. This same base period (as used in this paragraph, "base period" means three or four of the crop years of the period 1955 through 1958) shall be used in applying a formula to accredited acreage records with respect to all farms in an allotment area. In case of death or incapacity of a tenant, his personal sugar beet production record shall be credited to the administrator or executor of his estate or to a member of his family, if in the year of such death or incapacity, or in the following year, such administrator, executor or family member continues as a tenant the customary sugar beet operations of the deceased or incapacitated tenant. In case of the merger or consolidation of two or more corporations, the sugar beet production record of any of the constituent corporations shall be credited to the surviving or consolidated corporation if in the year of the merger or consolidation, or in the following year, the surviving or consolidated corporation operates land as a tenant and produces sugar beets. The proportionate share established, or which would have been established, pursuant to this paragraph, for any land removed from sugar beet production because of transfer by sale, lease or donation to any Federal, State or other agency or entity, having the right of eminent domain, shall, upon application to the State Committee within three years from the date of such transfer, be added to the proportionate share, if any, established for other land within the

State owned or purchased by the owner of the land so transferred.

(2) *Farm bases—*(i) *Farm history area.* In an area where personal production records are not utilized, the farm base for any farm shall be determined by applying a formula to the accredited acreage record of the farm within the base period: *Provided*, That for any farm for which a new-producer share was established for any crop year subsequent to the first year of the base period, the base shall be the larger of the acreage resulting from the application of the formula, or the 1958-crop accredited acreage for the farm but not in excess of the 1958-crop established share for the farm.

(ii) *Personal history area.* In an area where personal production records of tenants are utilized, the farm base for any farm operated for the 1959-crop year by a tenant having a personal accredited acreage record during the base period shall be computed by applying a formula to the acceptable personal accredited acreage record of such tenant within the base period, or to all or a portion of the accredited acreage record of the farm during the base period but to not less than the landowner's shares of the crops covered by such accredited acreage record, or to a combination of such personal record and such record of the farm during the base period: *Provided*, That for any farm operated for the 1959-crop year by such tenant who operated a farm for which a new-producer share was established for any crop subsequent to the first year of the base period, the base shall be not less than the larger of the acreage resulting from the application of the formula to his acceptable personal accredited acreage record, or the 1958-crop accredited acreage for the farm operated by him during the 1958-crop year but not in excess of the 1958-crop share established for such farm. For any farm in a personal history area which is operated for the 1959-crop year by the owner, or by a tenant who has no personal accredited acreage record during the base period, the farm base shall be computed by applying a formula to the accredited acreage record of the farm during the base period, or to a portion of the accredited acreage record of the farm for each year during the base period, but to not less than the landowner's shares of the crops covered by such accredited acreage record: *Provided*, That for any owner-operated farm for which a new-producer share was established for any crop year subsequent to the first year of the base period, the base shall be the larger of the acreage resulting from the application of the formula to the accredited acreage record of the farm, or the 1958-crop accredited acreage for the farm but not in excess of the 1958-crop established share for the farm. In each allotment area in which portions of accredited acreage records of farms during a base period are used for determining farm bases, as provided in this subparagraph, the State Committee shall use similar portions of the accredited acreage records for all farms of the same category in the allotment area.

(3) *Initial shares.* In any allotment area in which the total of farm bases is

smaller than the area allotment less the set-asides of acreage made pursuant to paragraph (g) of this section, initial farm proportionate shares shall be established as follows: For farms for which the respective requested acreages are equal to or less than their farm bases, the initial shares shall coincide with the requested acreages; and for all other farms, initial shares shall be computed by prorating to such farms in accordance with their respective bases the area allotment less such set-asides and the total of the initial shares of the farms for which the requested acreages are equal to or less than their farm bases. In any allotment area in which the total of farm bases equals or exceeds the area allotment less the set-asides of acreage made pursuant to paragraph (g) of this section, initial farm proportionate shares shall be computed by prorating to the farms in accordance with their respective bases, but not in excess of their requests, the area allotment less such set-asides.

(4) *Adjustments.* Initial proportionate shares shall be adjusted by the State Committee to the extent determined by it to be necessary to establish a proportionate share for each farm which is fair and equitable as compared with proportionate shares for all other farms in the allotment area, by taking into consideration availability and suitability of land, area of available fields, crop rotation, availability of irrigation water (where irrigation is used), adequacy of drainage, availability of production and marketing facilities, and the production experience of the operator. If any acreage is set aside for increasing small-producer shares under paragraph (g) of this section, all of such acreage shall be used in increasing the shares for all farms in the area for which the relatively smallest shares would otherwise be established pursuant to this section and for which additional acreages are requested. The share for each such farm shall be increased to the highest common acreage level attainable for all such farms by the full use of such set-aside. Such level shall be determined and fixed by the State Committee on the basis of the acreage set aside for such purpose, and by taking into consideration the size of proportionate shares for small farms and of sugar beet operations of small producers in the allotment area. Such acreage level shall be included as a part of the basic standards and procedures effective for the State and published in the FEDERAL REGISTER.

(j) *Establishment of individual proportionate shares for new-producer farms.* Within the acreage set aside for new-producer farms from the State acreage allocation pursuant to paragraph (g) of this section and other unused acreage that the State Committee determines should be used for new producers, proportionate shares shall be established in an equitable manner for farms which are to be operated by new producers during the 1959 crop year. The State Committee shall determine the minimum acreage which is economically feasible to plant as a new-producer farm proportionate share. In determin-

ing whether a farm for which a request is filed for a new-producer proportionate share may qualify for such a share, and to assist in establishing new-producer proportionate shares which are fair and equitable as to relative size among qualified farms, the State Committee shall take into consideration availability and suitability of land, availability of irrigation water (where irrigation is used), adequacy of drainage, the production experience of the operator, and the availability of production and marketing facilities. In the consideration of the availability of such facilities, the combined costs of the producer and the processor for transporting beets from the farm to the nearest beet sugar factory, within broad rate limits, may be taken into account. If in any allotment area there is insufficient acreage to establish minimum new-producer proportionate shares in all cases well-qualified under the aforesaid considerations, preference shall be given by establishing shares for farms whose operators have had significant previous sugar beet production experience, and minimum new-producer proportionate shares shall be established to the extent of the acreage available among the balance of the well-qualified applicants, through selection by lot. The entire acreage set aside for new producers shall be allotted to new producers, if requested, unless the State Committee finds that new-producer farms would then be allotted shares out of proportion to the shares established for old-producer farms and such committee obtains the approval of the Director to allot a lesser acreage. Any acreage set aside for new producers and not requested and any acreage allotted to new producers and remaining unused, shall be available for distribution to other farms.

(k) *Redistribution of unused proportionate share acreage.* Adjustments in proportionate shares may be made within the State acreage allocation throughout the crop season, or during a part thereof, in accordance with procedures established by the State Committee to offset underplanting and failure to plant. Such adjustments may be effected on a sub-area basis, such as counties, sugar factory districts, or sugar company territories. In case of a disagreement between producers and a sugar beet processor with respect to the sugar beet purchase contract to be effective in the settlement area, or where no company offers a contract to producers to cover fully the shares established for their farms, the shares allotted to the farms operated by such producers shall not be reduced unless the affected producers voluntarily agree to reductions in their respective proportionate shares, or the State Committee determines that such shares should be reduced because of unusual circumstances and for good cause and that the involved acreages should be reallocated by the State Committee to other producers.

(l) *Small producers, cash tenants, share tenants, and sharecroppers.* In establishing proportionate shares, the State Committee shall, insofar as practicable, protect the interests of small

producers and the interests of producers who are cash tenants, share tenants and sharecroppers.

(m) *Notification of proportionate shares.* Each farm operator filing a request shall be notified in writing on behalf of the State Committee of the proportionate share established in response to his request, even if the acreage established is "none", and such notice shall inform him of his right to appeal under paragraph (o) of this section; and each such farm operator shall be notified in writing of any adjustment made in the proportionate share as provided in this section. In any case in which a tentative proportionate share is computed pursuant to a preliminary request for a proportionate share as provided in paragraph (f) of this section, the person filing the preliminary request shall be furnished a notice which shall inform him that the acreage stated thereon as a tentative proportionate share does not constitute the establishment of a farm proportionate share for the purpose of payment under the Sugar Act of 1948, as amended, and that a farm proportionate share for such purpose may be established only upon the filing of a fully completed request for a farm proportionate share within the time and in the manner as provided in paragraph (f) of this section. The farm operator of each farm for which a farm proportionate share is redetermined in accordance with the provisions of paragraph (n) of this section shall be notified in writing on behalf of the State Committee of the redetermined proportionate share and of the right to appeal therefrom as provided in paragraph (o) of this section, and in addition in the case of a farm proportionate share redetermined under the provisions of subparagraph (2) of paragraph (n) of this section the farm operator shall be furnished with a statement explaining the reasons for such redetermination.

(n) *Redetermination of proportionate shares.* Farm proportionate shares shall be redetermined under the following circumstances:

(1) *Reconstitution of farms—(i) Before planting time.* Where a farm, as constituted at the time a 1959-crop proportionate share is established for it, is subdivided or is combined with or becomes a part of another farm prior to planting time, the share shall be cancelled and new shares shall be established for each farm, in accordance with paragraph (i) or (j) of this section.

(ii) *After planting time but prior to harvest.* Where a farm as constituted at the time a 1959-crop proportionate share is established for it, is combined with another 1959 farm or part thereof subsequent to planting time but prior to harvest of the 1959-crop beets, the proportionate share established for such farm shall be added to the share, if any, established for the farm with which it is combined to establish a proportionate share for the combined farm. Where a farm, as constituted at the time a 1959-crop proportionate share is established for it, is subdivided and each division becomes a separate farm or part of another farm, subsequent to planting time but prior to

harvest of the 1959-crop beets, the proportionate share established for such farm shall be prorated to the subdivisions on the basis of the acreage planted to 1959-crop sugar beets on each subdivision. Such prorated portions of the 1959-crop proportionate share so determined shall then be added to the 1959-crop proportionate share, if any, of the land with which it is combined to establish a proportionate share for each such reconstituted farm. For the purposes of this subparagraph, the division or combination of a farm or farms and the reconstitution of a farm or farms referred to in this subparagraph shall be those which give effect to the definition of a farm set forth in Part 822 of this chapter.

(2) *Improper credit for personal history.* If the county committee determines that the proportionate share for any farm was established with consideration for the personal history of a person who had no interest or did not acquire any interest in such farm as a tenant, or who was not the operator of the farm at the time of planting sugar beets on the farm, the State Committee shall be notified of the circumstances, and the proportionate share for the farm shall be redetermined on the basis of the personal history of the operator of the farm at the time of redetermination, the farm history, or new-producer procedure, whichever is applicable, under the provisions of paragraph (1) or (j) of this section, whichever is applicable, even though a downward adjustment to 0 acres may be required.

(c) *Appeals.* A farm operator who believes that the proportionate share established for his farm pursuant to this section is inequitable may file a written appeal for reconsideration of such proportionate share at the local Agricultural Stabilization and Conservation county office, not later than the date shown in the notification of proportionate share as established by the State Committee. The appeal shall be accompanied by a statement of facts constituting the basis for such appeal. The appeal shall be reviewed in such county office and forwarded with recommendations to the Agricultural Stabilization and Conservation State Office. The appeal shall be reviewed and acted upon by the State Committee, or in lieu thereof, by a sugar beet appeals committee to be designated by the State Committee and to be composed of three members, including at least one member of the State Committee. The other two members shall be either State committeemen or employees of the ASC State Office, or one of each. Any increase in the proportionate share approved by reason of the appeal shall be within the acreage set aside for appeals pursuant to paragraph (g) of this section and any other acreage remaining unused within the State allocation. The operator shall be notified in writing as soon as possible regarding the decision in his case. If the farm operator is dissatisfied with the decision in his case, he may appeal in writing to the Director, whose decision shall be final. In acting upon the appeal, the State Committee, the Sugar Beet Appeals Com-

mittee, or the Director shall consider only such matters as under the provisions of this determination are required or permitted to be considered by the State Committee in the establishment of the farm proportionate share to be reviewed.

(p) *Eligibility for payment under the act.* For any producer of 1959-crop sugar beets on the farm to be eligible for payment under the act, the acreage of sugar beets grown on the farm and marketed (or processed) for the production of sugar or liquid sugar shall not exceed the proportionate share determined for the farm in accordance with this section, except that any sugar beets grown on acreage in excess of such proportionate share may be marketed (or processed) or the extraction of sugar or liquid sugar for livestock feed or for the production of livestock feed, if the operator-producer on the farm furnishes to the county committee weight tickets evidencing that such sugar beets were sold by him, or were processed by or for him, for the extraction of sugar or liquid sugar for livestock feed, or for the production of livestock feed, and if so sold, were purchased by the processor for such purpose. Also, the requirements of the act with respect to child labor shall have been met, except that such requirements shall not be applicable to any sugar beets marketed (or processed) from an acreage in excess of the proportionate share for the farm for the production of sugar or liquid sugar for livestock feed or for the production of livestock feed, if the producer furnishes proof which the county committee finds acceptable and adequate that the work performed by any child subject to such requirements was related solely to such sugar beets. In addition, the requirements of the act and of the regulations issued pursuant thereto with respect to wage rates and, in the case of a processor-producer (a producer who is also a processor), prices paid for sugar beets shall have been met.

(q) *Filing application for payment.* Application for payments authorized under Title III of the act with respect to sugar beets planted on a farm for harvest during the 1959-crop season shall be made on form SU-110 by the producer on the farm, or his legal representative, who must sign the form and file it in the Agricultural Stabilization and Conservation county office for the county wherein the farm is located, or with a representative of such office, no later than December 31, 1961.

(r) *Determination of eligibility and basis for payment; and appeals for review thereof.* Except as otherwise provided in regulations relating to conditional payments, compliance with the conditions prescribed by the act and regulations for any payment authorized under Title III of the act, the facts constituting the basis for any such payment, and the amount thereof, shall be determined by the county committee. Determinations by the county committee shall be made and decided in accordance with the applicable provisions of the act and regulations issued by the Secretary thereunder and on the basis of the facts

in the individual case. Within 15 days after notice of such a determination is forwarded to or made available to a producer, he may request the county committee in writing to reconsider such determination. The county committee shall notify him of its decision in writing. If the producer is dissatisfied with the decision of the county committee, he may, within 15 days after the date of mailing of the decision to him, appeal in writing to the State Committee. The State Committee shall notify him of its decision in writing within 30 days after the submission of his appeal. If the producer is dissatisfied with the decision of the State Committee, he may, within 15 days after the date of mailing of the decision to him, request the Secretary to review the decision of the State Committee. The decision of the Secretary shall be final.

(s) *Obtaining information regarding eligibility for payment.* Where it is necessary to obtain information to assist the county committee in determining compliance with the conditions prescribed by the act and regulations for any payment authorized under Title III of the act, the facts constituting the basis for any such payment or the amount thereof, or to assist the State Committee or the Secretary in reviewing, upon appeal, any such determination by the county committee, any such information with respect to acreage or compliance shall be obtained as provided in the applicable provisions of Part 718 of this chapter (22 F. R. 3747, as amended). If the operator, or his representative, of any farm with respect to which application is made for any payment authorized under Title III of the act prevents the obtaining of the information necessary to determine compliance with the conditions for any such payment, the facts constituting the basis of any such payment or the amount thereof, as provided in this paragraph, the conditions prescribed by the act and regulations for any such payment shall be deemed not to have been met until such farm operator or his representative permits such information to be obtained.

STATEMENT OF BASES AND CONSIDERATIONS

Sugar Act requirements. As a condition for payment section 301 (b) of the act provides that there shall not have been marketed (or processed), except for livestock feed or for the production of livestock feed, an acreage of sugar beets grown on the farm and used for the production of sugar or liquid sugar in excess of the proportionate share for the farm as determined by the Secretary pursuant to section 302 of the act. In the domestic beet sugar area, the term "proportionate share" is the individual farm's share of the total acreage of sugar beets required to enable the producing area to meet its quota (and provide a normal carryover inventory) as estimated by the Secretary for the calendar year during which the larger part of the sugar from such crop normally would be marketed.

Section 302 (a) of the act provides that the amount of sugar with respect to which payment may be made shall be the amount of sugar commercially re-

coverable from the sugar beets grown on a farm and marketed (or processed by the producer) for sugar or liquid sugar not in excess of the proportionate share established for the farm.

Section 302 (b) provides that in determining the proportionate share for a farm, the Secretary may take into consideration the past production on the farm of sugar beets marketed (or processed) within the proportionate share for the extraction of sugar or liquid sugar and the ability to produce such sugar beets, and that the Secretary shall, insofar as practicable, protect the interests of new producers and small producers, and the interests of producers who are cash tenants, share tenants, or sharecroppers, and of the producers in any local producing area whose past production has been adversely, seriously and generally affected by drought, storm, flood, freeze, disease or insects, or other similar abnormal and uncontrollable conditions.

General. Restrictive proportionate shares are required when the indicated sugar supply for an area will be greater than the quantity needed to fill the quota and provide a normal carryover inventory for such area.

The sugar extracted from each crop in the beet sugar area is normally marketed during two calendar years. Since the processing of the crop in most of the beet sugar factory districts usually begins in the month of October, only a minor portion of the total sugar extracted from a crop is marketed during the balance of the calendar year.

The curtailment of sugar beet acreage by restrictive proportionate shares for the current period began with the 1955 crop. The Department has repeatedly attempted to promote acreage control by the industry in lieu of Governmental control by restrictive proportionate shares. Extensive efforts in that direction were made during the spring months of 1958. The majority of industry representatives was unwilling to assume full responsibility for acreage control through the contracting process. Much effort was then expended in attempting to develop possible alternative programs under which such representatives would assume greater responsibility in establishing restrictive shares. One phase of this effort involved the creation of an industry task force and the holding of special meetings with its members. It was finally concluded that control by the industry was not feasible and that the Department must continue full responsibility for establishing and operating a 1959-crop restrictive share program to avoid accumulation of sugar stocks larger than necessary to fill the quota and provide a normal carryover.

Public hearing. An informal public hearing was held by the Department in Denver, Colorado, on June 16, 1958, for the purpose of discussing the 1959 Sugar Beet Acreage Program. In a letter sent to sugar beet growers and processors on June 6 and in a press release announcing the hearing, also dated June 6, the Department outlined a general plan for establishing 1959-crop shares, which was quite similar to the procedure for the 1955-58 programs, and also requested

comments on a number of possible minor variations therefrom. Industry representatives presented considerable testimony and also subsequently submitted numerous briefs. The Department also obtained many helpful comments regarding a desirable 1959-crop program from ASC State Offices.

Consideration of the acreage limitation for the 1959 crop was deferred pending the development of more complete data on the crop now growing and probable quota requirements. Recommendations in this respect were requested of sugar beet grower associations and processors by letter of August 19, 1958. Responses were industry-wide and suggestions varied from "not in excess of 915,000 acres", as submitted in a number of cases, to one of 975,000 acres.

The Department's suggestion of prorating to States acreages for new producer shares on the basis of requests for such shares under previous programs drew general opposition because the number of such requests and the involved acreages were deemed unrepresentative of the need for new-producer shares in most States and allotment areas. The possibility of considering distance from a beet sugar factory and transportation costs as a seventh factor in selecting new producers induced varying reactions. However, a favorable reaction was indicated to the selection by lot of qualified new producers when the acreage set aside for such producers is insufficient to provide shares of economic size for all prospective growers who are rated well-qualified with respect to the various selection factors.

A suggestion of requiring geographical allotment areas rather than sugar company areas under certain circumstances developed no support, evidencing general satisfaction with the current optional basis. The establishment of area allotments on accredited acreage records for the crops of 1955-58 was approved generally, but the optional use at the farm level of a five-year base period (1954-58) was suggested in a few instances. Very little interest was shown in limiting the shares of old producers to their average acreages in the base period. There was agreement with the proposal to add "crop rotation" as a standard for considering adjustments in old-producer shares. The suggested possible discontinuance of the reallocation of unused acreage met with almost unanimous disapproval, although many indicated a willingness to consider a cut-off date for such reallocations.

Determination. This determination establishes a limitation of 925,000 acres for the 1959 crop of sugar beets. In establishing this acreage, consideration has been given to the prospective sugar supply and inventory situation, the probable sugar marketing opportunities of the area, recommendations of representatives of the beet sugar industry, and other relevant matters. The resultant planted acreage and sugar production, together with inventory stocks, should enable the area to meet its 1960 quota and provide a normal carryover inventory of sugar.

The acreage reserved for possible contingencies is again set at 2,500 acres to

assure provision for unforeseen developments.

The balance of the national acreage limitation remaining after withdrawal of the 2,500-acre reserve is allocated to the twenty-two sugar beet producing States by using as a base acreage for each such State the larger of (a) the 1958-crop allocation of the State, not including acreage from the national reserve, or (b) the State's pro rata share of 912,500 acres (the acreage prorated for the 1958 crop) based upon average 1955-57 recognized accredited acreages. For each year of the base period, the State accredited acreage recognized for this purpose, did not exceed the State allocation for that year, even though the total of planted acres, plus prevented acres approved at the farm level, exceeds such allocation.

Under prior programs, State allocations have been established primarily upon the basis of planted acreages for the 1950-54 crops. Moving base periods have not been employed. The record total plantings of 1950 and the 30 percent drop to the 1952 level included extreme variations in the plantings for many States. Inasmuch as restrictions have been effective for the last four crops, the use of a base period comprising only restricted crops is now possible. The formula as stated above used 1958-crop State allocations as bases where they were more favorable than average accredited acreages, to smooth the transition between such periods. A three-year base period (1955-57) was selected in preference to the four-year period because final 1958-crop data are not available for all States, particularly for California where a significant part of the current crop is yet to be planted. The resulting allocations are deemed practicable and reasonable.

The procedure for establishing area allotments and individual farm shares is similar generally to the 1958-crop procedure, with the more significant exceptions as follows:

a. In view of the current interest in sugar beet production, the paragraph is omitted which permitted the waiver of certain program requirements when the acreage requested was less than the State allocation. This step is necessary to avoid the possibility of total plantings exceeding the State allotment if restrictive proportionate shares are not imposed and thereby requiring subsequent disposition of excess acreage for uses other than sugar.

b. The formula used for establishing area allotments from the State allocation must employ a base period comprising the four crop years 1955-58, or any three of such years. The same option as to years applies to the formula used in computing individual farm bases from an area allotment. In reference to any allotment area, the base periods used for these two purposes need not be identical. Because of the use of a relatively short, current base period, the former authorization for using most recent shares as farm bases is omitted.

c. "Crop rotation" is added as a standard to be considered in making adjustments in initial shares for old producers.

d. The provisions concerning the establishment of new-producer shares are changed somewhat. Since producers beginning production of a new crop need sufficient acreage to warrant arrangements for the necessary labor, equipment and supplies, their interests are protected practicably by providing that where the acreage available for new-producer shares is less than that requested by well-qualified applicants, shares for new producers will be established in minimum economic units. "Area of available fields" is omitted as a consideration, since its pertinence for new producers is adequately covered by "availability of land." Also, in the consideration of availability of production and marketing facilities, the cost (within broad rate limits) of transporting beets from the farm to the nearest factory transportation-wise may be taken into account. Low transportation costs contribute to economical production and marketing of sugar beets, and in reference to potential new producers indicate to some degree ability to continue with production once started. However, if the State Committee determines that the agronomic advantages of maintaining a scattered production pattern in the area outweigh the importance of transportation costs, such costs may be disregarded. The establishment of new-producer shares for the crops of 1955-58 has demonstrated that usually in areas in which the demand for such shares is acute, only a few of those requesting shares have outstanding ability by virtue of significant previous production experience plus other general qualifications. The remaining available acreage frequently is insufficient to provide minimum economic shares for applicants well-qualified under the criteria, even after the less-qualified have been eliminated from consideration. Therefore, it has been determined that in such circumstances the interests of new producers may most practicably be protected by the selection by lot of other recipients of new-producer shares from among those well-qualified.

e. To facilitate the allotment of unused acreages within all allotment areas to permit timely planting, the procedure is amplified to authorize the use of subareas, such as counties, sugar factory districts, or the territories served by sugar companies. In large allotment areas of a number of States, the handling of allotments on a county basis will facilitate that process, particularly by making better use of ASC county units. Allotment by sugar factory districts or sugar company territories within a State should be particularly effective in the two areas of California and the area in Southern Colorado. Each of these relatively large areas is served by several sugar companies. While the use of multiple-company areas is advantageous to producers in certain respects, their size and the separate interests of sugar companies have impeded timely and effective allotments. Most of the other 44 allotment areas of the sugar beet-producing States are smaller and each of 42 of such areas is served by only one sugar company. The provision to

use subareas is designed to promote as effective allotments in large areas and in the few multiple-company areas as are achieved elsewhere. In the multiple-company areas, the companies will compete for acreage as formerly, but there will be more incentive for them to check closely on portions of shares unused so as to facilitate allotments in timely fashion to producers desiring additional acreage.

The provision effective for the 1958 crop requiring that acreage released by producers prior to planting-time be reallotted to farms having small shares to promote more efficient production is omitted because it did not prove to be as effective as anticipated. It is expected that State Committees will meet the problem more positively through the use of acreage available from deficit requests, set-asides for adjustments, or unused portions of shares.

f. Included in this determination is a provision which is new in applicability to sugar beet proportionate shares, although similar provisions have been effective for a number of crops in Puerto Rico and the Mainland Cane Sugar Area. Provision is made for the transfer of shares which would be effective otherwise for land removed from sugar beet production because of transfer to any agency having the right of eminent domain. This provision should be helpful to producers in various special circumstances, such as those whose land will be used in the expanded national highway program. While their problems, as well as those of others in comparable situations, could be met with discretionary actions by State Committees under other provisions of the determination, the new language will provide more positive directions for and assurances of equitable treatment.

As formerly, ASC State Committees will develop the proportionate share procedures with the cooperation of industry advisory committees and such procedures will be subject to the approval of the Director of the Sugar Division.

Accordingly, I hereby find and conclude that the aforesaid determination will effectuate the applicable provisions of the act.

(Sec. 403, 61 Stat. 932; 7 U. S. C. Sup. 1153. Interprets or applies secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U. S. C. Sup. 1131, 1132)

Issued this 3d day of October 1958.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 58-8361; Filed, Oct. 8, 1958; 8:51 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 986—MILK IN RED RIVER VALLEY MARKETING AREA

ORDER REGULATING HANDLING OF MILK

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986.101 Separability of provisions.

AUTHORITY: §§ 986.0 to 986.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 986.0 *Findings and determinations.* (a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Red River Valley marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (a) producer milk, including a handler's own production, (b) other source milk classified as Class I milk; and Class I milk disposed of on routes in the marketing area from nonpool plants.

(b) *Additional findings.* (1) In view of the fact that this order constitutes the original imposition of a regulatory program of this nature for the market, the provisions other than those relating to prices and payments to producers should be put into effect prior to the effective date of the entire order to afford handlers an opportunity to make any necessary changes in their accounting procedure or other adjustments as required to conform with all provisions of the order. Reasonable time will have been afforded interested parties to pre-

pare to comply with the aforesaid provisions.

(2) The public hearing on which this order is based was conducted August 6-9, 1957. The recommended decision of the Acting Deputy Administrator, Agricultural Marketing Service, was issued on May 19, 1958, and was published in the FEDERAL REGISTER on May 22, 1958. A revised recommended decision of the Deputy Administrator, Agricultural Marketing Service was issued on August 12, 1958, and was published in the FEDERAL REGISTER on August 15, 1958. The final decision was issued by the Assistant Secretary on September 12, 1958, and was published in the FEDERAL REGISTER on September 18, 1958. Handlers have known of the impending requirements of the order and have had adequate time to prepare to comply with such requirements.

(3) Furthermore, marketing conditions continue to remain unstabilized each day the effective date of the order is delayed. The order provides that payments to producers during the months of March through June be based on their average daily deliveries of milk to handlers during the months of September through December 1958.

(4) It is hereby found and determined in view of the aforesaid facts and circumstances that good cause exists for making §§ 986.0 to 986.27 (b), §§ 986.30 to 986.46 and 986.86 to 986.101 effective on October 16, 1958, and the entire order effective November 1, 1958, and that it would be contrary to the public interest to delay such effective dates beyond those specified. (See sec. 4 (c), Administrative Procedure Act, 5 U. S. C. 1001 et seq.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c (9) of the act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order is the only practicable means pursuant to the declared policy of the act of advancing the interests of producers as defined in the order; and

(3) The issuance of this order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Red River Valley marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

§ 986.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 986.2 *Secretary.* "Secretary" means the Secretary of Agriculture or any of-

ficer or employee of the United States who is authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 986.3 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture, or such other Federal agency as may be authorized to perform the price reporting functions specified in this part.

§ 986.4 *Red River Valley marketing area.* "Red River Valley marketing area", hereinafter called "marketing area" means all territory within the following counties, including all municipal corporations; Federal reservations, facilities, and installations; and state institutions located therein: Caddo, Carter, Comanche, Grady, Jackson, Kiowa, Stephens, and Tillman in Oklahoma, and Hardeman, Wichita, and Wilbarger in Texas.

§ 986.5 *Person.* "Person" means any individual, partnership, corporation, association or other business unit.

§ 986.6 *Producer.* "Producer" means any person, other than a producer-handler, who produces milk in compliance with the requirements specified in paragraph (a) or in paragraph (b) of this section, which milk is received directly from the farm at a pool plant or is caused to be diverted by a handler within the limits prescribed in § 986.63:

(a) Produces milk on a dairy farm subject to regular inspection by a duly constituted state or municipal health authority, under a dairy farm rating or permit issued by such authority for the production of milk to be disposed of for fluid consumption;

(b) Produces milk which is acceptable to an agency of the Federal Government for fluid consumption in its reservation, facility, or installation.

The term producer shall not include any person with respect to milk received by a handler who is partially exempt from the provisions of this part pursuant to § 986.61; nor shall it include a person whose milk is diverted to a pool plant by a cooperative association if such person retains his status as a producer as defined in another order issued pursuant to the act and his milk is classified and priced under such other order.

§ 986.7 *Distributing plant.* "Distributing plant" means all the buildings, premises, and facilities of a plant: (a) which is subject to regular inspection by a duly constituted state or municipal health authority, or by an agency of the Federal Government located in the marketing area, (b) in which milk or skim milk is processed or packaged and (c) from which Class I milk is disposed of during the month on routes (including routes operated by vendors or through plant stores) to wholesale or retail outlets located in the marketing area (except deliveries in bulk to other pool plants) in an amount greater than an average of 600 pounds per day.

§ 986.8 *Supply plant.* "Supply plant" means all the buildings, premises, and facilities of a plant from which fluid milk products equal to not less than 50

percent of its receipts of milk from dairy farmers, who would be producers if this plant qualified as a pool plant, are shipped to a distributing plant during such month: *Provided*, That any plant which qualifies as a supply plant for each of the months of September through December shall, upon written application to the market administrator before January 31 of the following year, be designated as a supply plant for the months of January through August.

§ 986.9 Pool plant. "Pool plant" means a distributing plant (other than that of a producer-handler or one which is exempt pursuant to § 986.61) or a supply plant.

§ 986.10 Nonpool plant. "Nonpool plant" means any milk processing or manufacturing plant other than a pool plant.

§ 986.11 Handler. "Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a nonpool plant from which Class I milk is disposed of in the marketing area; or

(c) A cooperative association with respect to the milk of producers diverted for the account of such association from a pool plant to a nonpool plant within the limits prescribed in § 986.63.

§ 986.12 Cooperative association. "Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) Has and is exercising full authority in the sale of milk of its members.

§ 986.13 Producer-handler. "Producer-handler" means any person who produces milk and who operates a plant from which there is distributed as Class I milk on routes in the marketing area only milk of such person's own production or milk which has been received from a pool plant.

§ 986.14 Producer milk. "Producer milk" means all skim milk or butterfat contained in milk of a producer which is received at a pool plant or which is diverted within the limits prescribed in § 986.63.

§ 986.15 Fluid milk product. "Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream or any mixture in fluid form of cream and milk or skim milk (except cultured sour cream, frozen storage cream, aerated cream products, ice cream and frozen dessert mix, evaporated or condensed milk, and sterilized products in hermetically sealed containers).

§ 986.16 Other source milk. "Other source milk" means all skim milk and butterfat, other than that contained in producer milk or in receipts of fluid milk products from other pool plants, including products designated as Class II milk pursuant to § 986.41 (b) from any source (including those from a plant's own production), which are reprocessed or con-

verted to another product in the plant during the month and any disappearance of nonfluid milk products not otherwise accounted for.

§ 986.17 Base milk. "Base milk" means milk received at a pool plant(s) from a producer during any of the months of March through June which is not in excess of such producer's daily average base computed pursuant to § 986.65 multiplied by the number of days in such month.

§ 986.18 Excess milk. "Excess milk" means milk received at a pool plant(s) from a producer during any of the months of March through June which is in excess of the base milk of such producer for such months, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 986.65.

MARKET ADMINISTRATOR

§ 986.25 Designation. The agency for the administration of this part shall be a market administrator, who shall be a person selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of the Secretary.

§ 986.26 Powers. The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

§ 986.27 Duties. The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties, and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds received pursuant to § 986.86: (1) The cost of his bond and the bonds of his employees, (2) his own compensation, and (3) all other expenses (except those incurred under § 986.85) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions pro-

vided for in this section and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly disclose, at his discretion, unless otherwise directed by the Secretary, the name of any handler who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 986.30 and 986.31 or payments pursuant to §§ 986.80 to 986.86;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk and the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports the milk so received from members of such association shall be prorated to each class in accordance with the same percentage as the total receipts of producer milk bear to such utilization of milk by such handler;

(i) Verify all reports and payments of each handler by audit of the records of such handler or any other handler or person to whom skim milk and butterfat are transferred, or by such other means as are necessary;

(j) Prepare and make available for the benefit of producers, consumers and handlers, general statistics and information concerning the operation of this part which do not reveal confidential information; and

(k) On or before the date specified publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

(1) On or before the 12th day of each month, the Class I price and the Class I butterfat differential, both for the current month;

(2) On or before the 5th day of each month, the Class II price, and the Class II butterfat differential, both for the preceding month; and

(3) On or before the 12th day of each month, the uniform price(s) computed pursuant to § 986.71 or § 986.72, whichever is applicable, and the butterfat differential computed pursuant to § 986.73, both for the preceding month.

REPORTS, RECORDS, AND FACILITIES

§ 986.30 Reports of receipts and utilization. On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in milk received from producers and, for the months of March through June, the aggregate quantities of base milk and excess milk;

(b) The quantities of skim milk and butterfat contained in (or used in the production of) receipts of fluid milk products from other handlers;

(c) The quantities of skim milk and butterfat contained in (or used in the production of) other source milk (except Class II products disposed of in the same form in which received without further processing or packaging by the handler) and any disappearance of other source milk held in inventory;

(d) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(e) The disposition of Class I products on routes wholly outside the marketing area;

(f) The quantities of fluid milk products on hand at the beginning and end of the month; and

(g) Such other information with respect to receipts and utilization as the market administrator may prescribe.

§ 986.31 Reports of payments to producers. On or before the 20th day of each month, each handler shall submit to the market administrator his producer payroll for deliveries of the preceding month showing:

(a) The total pounds of milk received from each producer and cooperative association, the total pounds of butterfat contained in such milk and the number of days' production represented by the milk received from such producer(s), including for the months of March through June each producer's deliveries of base and excess milk;

(b) The amount of payment to each producer or cooperative association; and

(c) The nature and amount of any deductions or charges involved in such payments.

§ 986.32 Other reports. (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who causes milk to be diverted to another pool plant or to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which it is to be diverted.

§ 986.33 Records and facilities. Each handler shall maintain and make available to the market administrator or his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and milk prod-

ucts on hand at the beginning and end of each month.

§ 986.34 Retention of records. All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 986.40 Skim milk and butterfat to be classified. All skim milk and butterfat received by a handler during the month, which is required to be reported pursuant to § 986.30, shall be classified by the market administrator pursuant to the provisions of §§ 986.41 to 986.46, inclusive.

§ 986.41 Classes of utilization. Subject to the conditions set forth in §§ 986.43 and 986.44, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted skim milk and concentrated nonfat milk solids) and butterfat (1) disposed of from the plant in the form of fluid milk products, except those classified pursuant to paragraph (b) (4) of this section, and (2) not specifically accounted for as Class II milk;

(b) Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product;

(2) Disposed of to commercial food manufacturing establishments which do not dispose of fluid milk products for fluid consumption;

(3) Contained in inventories of fluid milk products on hand at the end of the month;

(4) Skim milk disposed of for livestock feed, or dumped after prior notification to and opportunity for verification by the market administrator;

(5) In shrinkage not to exceed 2 percent of the skim milk and butterfat contained in producer milk, except that diverted pursuant to § 986.63; and

(6) In shrinkage of other source milk.

§ 986.42 Shrinkage. The market administrator shall determine the assignment of shrinkage to Class II milk as follows:

(a) Determine the total shrinkage of skim milk and butterfat in each pool plant; and

(b) Assign the shrinkage of skim milk and butterfat pro rata between producer milk and other source milk received in the form of a fluid milk product.

§ 986.43 Responsibility of handlers and reclassification of milk. (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk and butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat classified as Class II milk, if later disposed of by such handler or another handler (whether in original or other form) as any fluid milk product, shall be reclassified as Class I milk. Any skim milk or butterfat classified as Class II milk in the previous month pursuant to § 986.41 (b) (3) shall be reclassified as Class I milk if it is subtracted from Class I during the current month pursuant to § 986.46 (a) (6) or the corresponding step of § 986.46 (b).

§ 986.44 Transfers. Skim milk and butterfat if disposed of by a handler by transfer or diversion from a pool plant shall be classified as follows:

(a) If transferred or diverted to a pool plant of another handler (except a producer-handler) in the form of fluid milk products it shall be classified so as to result in the maximum assignment of the producer milk of both handlers to Class I milk. Any additional amounts of skim milk and butterfat shall be classified as Class I milk unless the operators of both plants claim utilization thereof in Class II milk in their reports submitted pursuant to § 986.30: *Provided*, That the skim milk or butterfat so assigned to Class II milk for any month shall be limited to the respective amounts thereof remaining in Class II milk for such month at the pool plant(s) of the receiving handler after subtraction of other source milk pursuant to § 986.46;

(b) As Class I milk, if transferred to the plant of a producer-handler in the form of fluid milk products;

(c) As Class I milk, if diverted or transferred in bulk in the form of milk or skim milk to a nonpool plant located more than 350 miles from the City Hall in Wichita Falls, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator;

(d) As Class I milk, if transferred in the form of cream to a nonpool plant, located more than 350 miles from the City Hall in Wichita Falls, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator, unless the handler claims classification as Class II milk, establishes the fact that such cream was transferred without Grade A certification, each container was tagged or labeled to show that the contents were only for manufacturing use, the shipment was invoiced accordingly, and the market administrator was given sufficient notice to allow him to verify the shipment;

(e) (1) As Class I milk, if transferred or diverted in bulk form as milk, skim milk, or cream to a nonpool plant located not more than 350 miles by the shortest hard-surfaced highway distance from the City Hall in Wichita Falls, Texas, from which fluid milk is disposed of on wholesale or retail routes or to other milk plants, unless the handler claims classification of Class II milk pursuant

to § 986.30 and all of the following conditions are met:

(1) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant and the market administrator is permitted to audit such books and records for purposes of verification; and

(2) Such nonpool plant received milk from dairy farmers who constitute a regular source of supply for Class I use as determined by the market administrator;

(3) If the above conditions are fulfilled, the market administrator shall classify such milk, subject to verification, in the following manner: (i) Determine the use of all skim milk and butterfat at such nonpool plant, and (ii) allocate the skim milk and butterfat so transferred to the highest use classification remaining after allowing first priority to that received at the nonpool plant directly from dairy farmers whom the market administrator determines constitute its regular source of Grade A milk for Class I use;

(f) As Class II milk, if transferred or diverted in bulk form as milk, skim milk, or cream to a nonpool plant which is not a pool plant as defined in any other order issued pursuant to the Act and which is located not over 350 miles from the City Hall, Wichita Falls, Texas, and from which no fluid milk is disposed of on wholesale or retail routes, except:

(1) If milk, skim milk, or cream is transferred from such nonpool plant to a pool plant, an amount equal to the skim milk and butterfat transferred to such nonpool plant from the pool plants of other handlers shall be deemed to have been transferred directly to the second pool plant and shall be classified in accordance with paragraph (a) of this section; and

(2) If milk, skim milk, or cream is transferred from such nonpool plant to a second nonpool plant from which fluid milk is distributed on wholesale or retail routes, the skim milk or butterfat transferred from the pool plant to the first nonpool plant shall be Class I milk in an amount equal to that transferred to such second nonpool plant, unless it is established that such milk or skim milk was transferred to the second nonpool plant without Grade A certification with each container labeled to show that the contents were for manufacturing use only, and that the shipment was invoiced accordingly.

(g) As Class II milk if transferred or diverted in bulk form as milk, skim milk or cream to a nonpool plant which is a pool plant as defined in another order issued pursuant to the Act and which is located not over 350 miles from the City Hall in Wichita Falls, Texas, and from which no fluid milk is distributed on wholesale or retail routes, except that if such transferee plant disposes of to other nonpool plants, which do distribute fluid milk products on wholesale or retail routes, more milk than the milk received at such transferee plant which is classified and priced under such other order, an amount equal to the difference shall be classified as Class I milk, except

that if such transferee plant has received milk, skim milk or cream from other plants regulated under this or other Federal orders, the amount of such transferred milk allocated to Class I shall be determined by prorating the amount of milk available for Class I allocation in accordance with the receipts from all such plants at the transferee plant.

§ 986.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical or other obvious errors the monthly report submitted by each handler pursuant to § 986.30, and shall compute the pounds of skim milk and butterfat in Class I milk and Class II milk. Skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 986.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 986.45, the market administrator shall determine the classification of milk received from producers for each handler in the following manner:

(a) Skim milk shall be allocated as follows:

(1) Subtract from the total pounds of skim milk in Class II milk, the pounds of shrinkage of skim milk in producer milk determined pursuant to § 986.41 (b) (5);

(2) Subtract from the remaining pounds of skim milk, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of nonfluid milk products other than condensed skim milk or nonfat dry milk;

(3) Subtract from the remaining pounds of skim milk in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of condensed skim milk or nonfat dry milk;

(4) Subtract from the remaining pounds of skim milk, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing and payment provisions of another order issued pursuant to the act;

(5) Subtract from the remaining pounds of skim milk, in series beginning with Class II milk, the pounds of skim milk in other source milk received in fluid milk products which were subject to the Class I pricing and payment provisions of another order issued pursuant to the act;

(6) Subtract from the remaining pounds of skim milk, in series beginning with Class II milk, the pounds of skim milk in inventory at the beginning of the month in the form of fluid milk products;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk received from other handlers in the form of fluid milk products pursuant to § 986.44;

(8) Add to the pounds of skim milk remaining in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(9) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk received from producers, subtract such excess from the pounds of skim milk remaining in the classes in series beginning with Class II milk. Any amount so subtracted shall be called "overage";

(b) Butterfat shall be allocated in the same manner prescribed in paragraph (a) of this section for determining the allocation of skim milk to producer milk; and

(c) Add the pounds of skim milk and the pounds of butterfat in each class computed pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in producer milk allocated to each class.

MINIMUM PRICES

§ 986.50 *Class prices.* Subject to the provisions of §§ 986.51 and 986.52 the minimum price per hundredweight to be paid by each handler for milk received at his plant from producers during the month shall be as follows:

(a) *Class I milk.* The Class I price shall be the price for Class I milk established under Federal Order No. 6 regulating the handling of milk in the Oklahoma Metropolitan marketing area at Oklahoma City, plus 15 cents.

(b) *Class II milk.* (1) For the months of February through July the Class II price per hundredweight shall be the average of the basic or field prices reported to have been paid or to be paid for ungraded milk of 4.0 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture.

Present Operator and Location

American Foods Company, Miami, Okla.
Gilt Edge Dairy, Norman, Okla.
Muskogee Dairy Products Company, Muskogee, Okla.
Page Milk Company, Coffeyville, Kans.
Pet Milk Company, Slocum Springs, Ark.
Real Test Foods Company, Tulsa, Okla.

(2) For the months of August through January, the Class II price per hundredweight shall be computed by adding the plus values pursuant to subdivisions (1) and (4) of this subparagraph as follows:

(i) From the simple average as computed by the market administrator of the daily wholesale selling prices (using the mid-point of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago, as reported by the Department of Agriculture during the month, subtract 3 cents, add 20 percent thereof and multiply by 4.0; and

(ii) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area as published by the Department of Agriculture for the period from the 26th day of the

preceding month through the 25th day of the current month, deduct 5.5 cents, multiply by 8.5 and then multiply by 0.96.

§ 986.51 Butterfat differentials to handlers. If the average butterfat content of the producer milk of any handler allocated to any class pursuant to § 986.46 is more or less than 4.0 percent there shall be added to the respective class price, computed pursuant to § 986.50 for each one-tenth of one percent that the average butterfat content of such milk is above 4.0 percent, or subtracted for each one-tenth of one percent that such average butterfat content is below 4.0 percent, an amount equal to the butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale selling price per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the Department of Agriculture during the month specified below by the applicable factor listed and dividing the result by 10:

(a) *Class I milk.* Multiply such price for the preceding month by 1.25; and

(b) *Class II milk.* Multiply such price for the current month by 1.15.

§ 986.52 Location adjustment credit to handlers. For that milk which (a) is received from producers at a pool plant located outside the State of Texas and which is classified as Class I, the prices specified in § 986.50 shall be reduced 5 cents per hundredweight, plus an additional 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is more than 100 miles distant from the City Hall in Wichita Falls, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator: *Provided*, That in calculating such adjustment, transfers to a pool plant at which a location adjustment credit is not applicable or at which it is less than at the transferor plant, shall be assigned to Class I milk only to the extent that Class I disposition at the transferee plant exceeds 95 percent of the receipts from producers at such plant. Such assignment to transferor plants should be made first to plants at which no location adjustment credit is applicable and then in sequence to plants at which the lowest rate of such adjustment credit would apply.

§ 986.53 Rate of compensatory payments. The rate of compensatory payment per hundredweight applicable to other source milk assigned to Class I use at pool plants, or disposed of as Class I milk on routes in the marketing area from nonpool plants, shall be calculated as follows:

(a) For the months of February through July, subtract the Class II milk price, adjusted by the Class II butterfat differential from the Class I price, adjusted by the Class I butterfat differential, and, except in the case of condensed skim milk and nonfat dry milk, by the location adjustment pursuant to § 986.52 which would apply if the nonpool plant were a pool plant; and

(b) For the months of August through January, subtract the uniform price, adjusted by the Class I butterfat differential, from the Class I price, adjusted by the Class I butterfat differential, and, except in the case of condensed skim milk and nonfat dry milk, by the location adjustment pursuant to § 986.52 which would apply if the nonpool plant were a pool plant.

§ 986.54 Use of equivalent prices. If for any reason a price quotation required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 986.60 Producer-handlers. Sections 986.40 to 986.46, 986.50 to 986.54, 986.55 to 986.67, 986.70 to 986.74, and 986.80 to 986.86, shall not apply to a producer-handler.

§ 986.61 Handlers subject to other orders. In the case of any handler who the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by another milk marketing order issued pursuant to the Act and whose milk is classified and priced under such other order, the provisions of this part shall not apply except that such handler shall, with respect to his total receipts and utilization or disposition of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

§ 986.62 Handlers operating nonpool plants. Each handler who is the operator of a nonpool plant which is not subject to the classification and pricing provisions of another order issued pursuant to the act, shall report as required pursuant to §§ 986.30 and 986.31, reporting receipts from and payments to dairy farmers in lieu of such information with respect to producers, and shall allow verification of such reports, and, on or before the 12th day of each month, he shall pay to the market administrator an amount computed by multiplying the total volume of Class I milk disposed of on routes in the marketing area from such nonpool plant during the preceding month by the rate of compensatory payment computed pursuant to § 986.53.

§ 986.63 Diverted milk. (a) Milk of a producer diverted by a handler, other than a cooperative association, from a pool plant to the pool plant of another handler for any day during the months of February through July and for not more than 10 days' production of a producer during any month for the period of August through January, shall be deemed to have been received by the diverting handler at the pool plant from which such milk was diverted, except that for the purpose of determining shrinkage pursuant to § 986.41 (b) (5), such milk shall be considered as producer milk at the pool plant to which it was

diverted. Milk so diverted for more than 10 days during any of the months of August through January, shall be considered as received at the plant to which it was diverted for the entire period of diversion.

(b) Milk diverted by a cooperative association, which does not operate a pool plant, for the account of such association from the pool plant of another handler to a nonpool plant, shall be deemed to have been received by such association at a pool plant at the same location as that from which the milk was diverted.

(c) Milk diverted from a pool plant by the handler operating such pool plant to a nonpool plant shall be considered to have been received at the plant from which diverted.

(d) Milk diverted by a handler, including a cooperative association, to a nonpool plant for more than 10 days' production of a producer during any month during the months of September through December, shall not be considered producer milk for the entire period of such diversion during the month.

DETERMINATION OF BASE

§ 986.65 Computation of daily average base for each producer. Subject to the rules set forth in § 986.66, the daily average base of each producer for the months of March through June of each year shall be computed by the market administrator by dividing the total pounds of milk received by a handler(s) at a pool plant(s) from such producer during the months of September through December immediately preceding by the number of days' production delivered by such producer during the period, or by 90, whichever is more: *Provided*, (a) That any person who becomes a producer after the base-forming period and who has established a base under another order issued pursuant to the act shall be assigned a base equal to that which he would have received if he had been a producer during the base-forming period if his milk is received at a pool plant during an entire month, and (b) That for any person who becomes a producer after the 3d day of October of any year by virtue of the plant to which such person delivers his milk having become a pool plant, the market administrator shall compute a base equal to that which such producer would have established had the plant to which he ships his milk been a pool plant during the entire base-forming period.

§ 986.66 Base rules. (a) A base shall apply to deliveries of milk by the producer for whose account that milk was delivered during the base-forming period:

(b) Base may be transferred during the months of March through June only in the following manner:

(1) In the event of death, retirement or entry into military service of a producer, the entire base may be transferred to a member(s) of such producer's immediate family who carries on the dairy enterprise, such transfer to be effective the first of the month following notification of the market administrator

in writing of the person to whom such base is to be transferred;

(2) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to either of the joint holders, or it may be divided, but only if the joint holders are members of the same family, and only upon application to the market administrator prior to the month in which the division is to become effective: *Provided*, That such application sets forth the percentage of the jointly held base which is to be assigned to each of the joint holders or his heirs and is signed by each joint holder or his heirs.

(c) A producer who ceases to deliver milk to a pool plant for more than 45 consecutive days during the six months prior to March 1, shall forfeit his base for the following base-utilization period.

§ 986.67 Announcement of established bases. On or before February 25 of each year, the market administrator shall notify each producer and the handler receiving milk from such producer, of the daily average base established by the producer.

DETERMINATION OF UNIFORM PRICES

§ 986.70 Computation of value of producer milk for each handler. For each month, the market administrator shall compute the value of producer milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 986.46 by the applicable class price (adjusted pursuant to §§ 986.51 and 986.52) and add together the resulting amounts;

(b) Add an amount computed by multiplying the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 986.46 (a) (2) (3) and (4) and the corresponding step of § 986.46 (b) by the rate of compensatory payment as determined pursuant to § 986.53;

(c) Add an amount computed by multiplying the pounds of any overage deducted from either class pursuant to § 986.46 (a) (9) and the corresponding step of § 986.46 (b) by the applicable class price(s); and

(d) Add any charges computed as follows: For any skim milk or butterfat in inventory reclassified pursuant to § 986.43 (b), which is not in excess of the quantity in producer milk classified as Class II milk (other than as shrinkage) in the handler's plant(s) for the preceding month, a charge shall be computed at the difference between its value at the Class I price for the current month and its value at the Class II price for the preceding month;

§ 986.71 Computation of the uniform price. For each of the months of July through February, the market administrator shall compute the uniform price per hundredweight of producer milk of 4.0 percent butterfat content, at Wichita Falls, Texas, as follows:

(a) Combine into one total the values computed pursuant to § 986.70 for the producer milk of all handlers who submitted reports prescribed in § 986.30 and who have made the payments pursuant to §§ 986.80 and 986.82 for the preceding month;

(b) Subtract, if the average butterfat content of the producer milk included under paragraph (a) of this section is greater than 4.0 percent, or add, if such average butterfat content is less than 4.0 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 4.0 percent by the butterfat differential computed pursuant to § 986.73, and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount equal to the total value of all allowable location adjustments to producers pursuant to § 986.74;

(d) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section; and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 986.72 Computation of uniform prices for base and excess milk. For each of the months of March through June, the market administrator shall compute the uniform prices per hundredweight for base and for excess milk, each of 4.0 percent butterfat content, at Wichita Falls, Texas, as follows:

(a) Compute the total value of excess milk for all handlers who submitted reports pursuant to § 986.30, and who have made the payments pursuant to §§ 986.80 and 986.82 as follows: (1) Multiply the hundredweight of such milk not in excess of the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II milk price, (2) multiply any additional hundredweight of excess milk not included in subparagraph (1) of this paragraph by the Class I milk price, and (3) add together the resulting amounts;

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 4.0 per cent butterfat received from producers;

(c) Subtract the total value of excess milk obtained in paragraph (a) of this section from the total value of milk computed pursuant to § 986.71 (a) to (d) and adjust by any amount involved in the adjustment of the uniform price of excess milk to the nearest cent;

(d) Divide the amount obtained in paragraph (c) of this section by the total hundredweight of base milk included in these computations; and

(e) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (d) of this section. The resulting figure shall be the uniform price for base milk of 4.0 percent butterfat received from producers.

§ 986.73 Butterfat differential to producers. The applicable uniform price(s) to be paid each producer shall be increased or decreased for each one-tenth of one percent that the average butterfat content of his milk is above or below 4.0 percent, respectively, at the rate de-

termined by multiplying the pounds of butterfat in producer milk allocated to each class by the appropriate butterfat differential for such class as determined pursuant to § 986.51, dividing by the total pounds of butterfat in producer milk and rounding to the nearest even tenth of a cent.

§ 986.74 Location adjustment to producers. In making payments to producers pursuant to § 986.80, for the months of July through February, each handler may deduct, for each hundredweight of milk, and for the months of March through June for each hundredweight of base milk received from producers at a pool plant which is located outside the State of Texas, 5 cents per hundredweight plus an additional 1.5 cents for each 10 miles or fraction thereof that such plant is more than 100 miles from the City Hall in Wichita Falls, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator.

PAYMENTS

§ 986.80 Time and method of payment for producer milk. (a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month, to each producer who did not discontinue shipping milk to such handler during the month, an amount equal to not less than the Class II price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month;

(2) On or before the 15th day of the following month, an amount equal to not less than the applicable uniform price(s) adjusted by the butterfat and location differentials to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to subparagraph (1) of this paragraph, (ii) less marketing service deductions made pursuant to § 986.85, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment pursuant to § 986.83, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 27th and 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member-producer (a) the total pounds of milk received during the preceding month, (b) the total pounds of butterfat contained in such milk, (c) the number of days of production included in such receipts, (d) for the months of March through June, the amount of base and excess milk received, and (e) the amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month written information which shows for each such member-producer the total pounds of milk received during the first 15 days of the current month.

The foregoing payment and submission of information shall be made with respect to the milk of each producer who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

§ 986.81 Producer-settlement fund. The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 986.62, 986.82, and 986.84, and out of which he shall make all payments to handlers pursuant to §§ 986.83 and 986.84: *Provided*, That any payments due to any handler may be offset by any payments due from such handler.

§ 986.82 Payments to the producer-settlement fund. On or before the 13th day after the end of each month, each handler shall pay to the market administrator any amount by which the value of producer milk as computed pursuant to § 986.70 for such month is greater than the amount required to be paid by him for such milk pursuant to § 986.80.

§ 986.83 Payments out of the producer-settlement fund. On or before the 14th day after the end of each month, the market administrator shall pay to each handler any amount by which the total value of his producer milk, computed pursuant to § 986.70, for such month is less than the amount required to be paid producers by such handler pursuant to § 986.80: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the necessary funds are available.

§ 986.84 Adjustments of accounts. Whenever audit by the market administrator or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such errors occurred.

§ 986.85 Marketing services. (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 986.80 shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

§ 986.86 Expense of administration. On or before the 15th day after the end of each month, each handler who operates a pool plant shall pay to the market administrator, as his pro rata share of the expense of the administration of this part, 5 cents or such lesser amount as the Secretary may prescribe for each hun-

dredweight of butterfat and skim milk contained in (a) producer milk, including such handler's own production, and (b) other source milk classified as Class I milk; and each handler who operates a nonpool plant, not subject to the classification and pricing provisions of another Federal order, shall make such payment only with respect to Class I milk disposed of within the marketing area on routes.

§ 986.87 Termination of obligations. The provisions of this section shall apply to any obligations under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this order to be made available, the market administrator may within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligations are made available to the market administrator or his representative;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (in-

cluding deduction or setoff by the market administrator) was made by the handler, if a refund of such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 986.90 *Effective time.* The provisions of this part, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 986.91 *Suspension or termination.* The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of any or all provisions of this part or any amendment thereto.

§ 986.92 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this part, or any amendment thereto, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 986.93 *Liquidation.* Upon the suspension or termination of any or all provisions of this part, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 986.100 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent and representative in connection with any of the provisions of this part.

§ 986.101 *Separability of provisions.* If any provisions of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D. C., this 3d day of October 1958, to be effective as follows:

Sections 986.0 to 986.27 (b), §§ 986.30 to 986.46 and 986.86 to 986.101 shall be effective October 16, 1958, and the entire order (§§ 986.1 to 986.101) shall be effective on and after November 1, 1958.

[SEAL]

DON PAARLBERG,
Assistant Secretary.

[F. R. Doc. 58-8345; Filed, Oct. 8, 1958;
8:48 a. m.]

TITLE 12—BANKS AND BANKING

Chapter II—Federal Reserve System

Subchapter A—Board of Governors of the
Federal Reserve System

[Reg. Y]

PART 222—BANK HOLDING COMPANIES

ACQUISITION OF STOCK IN SMALL-BUSINESS INVESTMENT COMPANY

§ 222.107 *Acquisition of stock in small-business investment company.* (a) A registered bank holding company requested an opinion by the Board of Governors with respect to whether that company and its banking subsidiaries may acquire stock in a small-business investment company organized pursuant to the Small Business Investment Act of 1958.

(b) It is understood that the bank holding company and its subsidiary banks propose to organize and subscribe for stock in a small-business investment company which would be chartered pursuant to the Small Business Investment Act of 1958 which provides for long-term credit and equity financing for small-business concerns.

(c) Section 302 (b) of the Small Business Investment Act authorizes national banks, as well as other member banks and nonmember insured banks to the extent permitted by applicable State law, to invest capital in small-business investment companies not exceeding one percent of the capital and surplus of such banks. Section 4 (c) (4) of the Bank Holding Company Act exempts from the prohibitions of section 4 of the act "shares which are of the kinds and amounts eligible for investment by National banking associations under the provisions of section 5136 of the Revised Statutes". Section 5136 of the Revised Statutes (paragraph "Seventh") in turn provides, in part, as follows:

Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation.

Since the shares of a small-business investment company are of a kind and amount expressly made eligible for investment by a national bank under the Small Business Investment Act of 1958, it follows, therefore, that the ownership or control of such shares by a bank holding company would be exempt from

the prohibitions of section 4 of the Bank Holding Company Act by virtue of the provisions of section 4 (c) (4) of that act. Accordingly, the ownership or control of such shares by the bank holding company would be exempt from the prohibitions of section 4 of the Bank Holding Company Act.

(d) An additional question is presented, however, as to whether section 6 of the Bank Holding Company Act prohibits banking subsidiaries of the bank holding company from purchasing stock in a small-business investment company where the latter is a "subsidiary" under that act.

(e) Section 6 (a) (1) of the act makes it unlawful for a bank "to invest any of its funds in the capital stock, bonds, debentures, or other obligations of a bank holding company of which it is a subsidiary, or of any other subsidiary of such bank holding company". Section 6 (b) of the act exempts from the prohibitions of section 6 the capital stock of any company described in section 4 (c) (1) of that act, but fails to exempt also investments in stock that fall within that part of section 4 (c) (4) which exempts from the divestment requirements of the act shares eligible for investment by national banks under section 5136 of the Revised Statutes.

(f) It might be argued that, since Congress deemed it proper for a holding company bank to invest in shares of the types of companies described in section 4 (c) (1) of the act, it would also be proper for banking subsidiaries of a bank holding company to purchase shares eligible for investment by national banks under section 5136 of the Revised Statutes. However, the express wording of the Act is to the contrary.

(g) In the absence of any facts which would seem to justify the Board in ignoring the present wording of section 6 of the Bank Holding Company Act and until section 6 (b) of that act is amended to include reference to section 4 (c) (4) (as indicated above and as recommended by the Board in its Report to the Congress of May 8, 1958), the Board is, therefore, compelled to conclude that section 6 prohibits the purchase by banking subsidiaries of a bank holding company of stock of a small-business investment company organized pursuant to the Small Business Investment Act of 1958, where that company is or will be a subsidiary of the bank holding company.

(h) Accordingly, section 6 of the Bank Holding Company Act prohibits banking subsidiaries of the bank holding company from purchasing stock in a small-business investment company organized pursuant to the Small Business Investment Act of 1958, where that company is or will be a subsidiary of the bank holding company. However, this prohibition would not apply to investment by the holding company alone in voting shares of such a small-business investment company even though the latter would constitute a subsidiary under the Bank Holding Company Act; nor would

it apply if the holding company and its banking subsidiaries should not together acquire as much as 25 per centum of the voting shares of such a small-business investment company and that company was also not otherwise a subsidiary of the bank holding company.

(Sec. 5, 70 Stat. 137; 12 U. S. C. 1844)

BOARD OF GOVERNORS OF THE

FEDERAL RESERVE SYSTEM,

[SEAL] KENNETH A. KENYON,
Assistant Secretary.

[F. R. Doc. 58-8338; Filed, Oct. 8, 1958;
8:47 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7126]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

MOORE PRODUCTS CORP. ET AL.

Subpart—*Misrepresenting oneself and goods*—Goods: § 13.1590 *Composition*; § 13.1647 *Guarantees*. Subpart—*Neglecting, unfairly, or deceptively, to make material disclosure*: § 13.1900 *Source or origin*: Foreign product as domestic. Subpart—*Using misleading name*—Goods: § 13.2345 *Source or origin*: Place: Foreign product or parts as domestic.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Moore Products Corp. et al., New York, N. Y., Docket 7126, September 11, 1958]

In the Matter of Moore Products Corp., a Corporation, Joseph M. Moore and Ann Moore, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging distributors in New York City with making no disclosure of the country of origin of expansion watchbands of base metals which they imported from Japan, colored gold by electrolysis, and sold to jobbers and wholesalers under the trade name "Mor-Flex", and mounted on display cards printed with the words "Gold Plated Top" and "Guaranteed".

Following acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on September 11 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Moore Products Corp., a corporation, and its officers, and Joseph M. Moore and Ann Moore, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of expansion watch bands or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any product made in Japan, or any other foreign country, without clearly disclosing the country of origin of said product.

2. Representing in any manner, directly or by implication, that a product, or any part thereof, is gold plated, unless the whole, or the part thereof, is mechanically plated with a substantial thickness of gold.

3. Representing, directly or by implication, that any product sold by respondents is guaranteed, unless the nature and extent of such guarantee and the manner in which the guarantor will perform are clearly disclosed.

4. Representing, directly or by implication, that any product sold by respondents is guaranteed when a service charge is imposed, unless the amount thereof is clearly disclosed.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: September 11, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 58-8339; Filed, Oct. 8, 1958;
8:48 a. m.]

[Docket 7090]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

MAGUIRE INDUSTRIES, INC.

Subpart—*Cutting off competitors' or others' access to customers or market*: § 13.560 *Interfering generally with distributive outlets*; § 13.587 *Selling competitive product at reduced or below cost price*. Subpart—*Discriminating in price under section 2, Clayton Act, as amended*—Price discrimination under 2 (a): § 13.695 *Annual purchases from all sources*; § 13.770 *Quantity rebates or discounts*. Subpart—*Offering unfair, improper and deceptive inducements to purchase or deal*: § 13.1990 *Inducement conditioned on unlawful practice*.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 2, 38 Stat. 730, as amended; 15 U. S. C. 45, 13) [Cease and desist order, Maguire Industries, Inc., Mt. Carmel, Ill., Docket 7090, September 11, 1958]

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a manufacturer of electronic components, including coils and transformers, in Mt. Carmel, Ill., selling principally to jobbers or distributors of television and radio repair parts for resale to dealers, industrial accounts, and radio and television repair shops, with discriminating in price by giving a 10 percent rebate to customers whose

purchases from it were equal to their total purchases from all sources in the previous twelve months, 7½ percent rebate if they equaled 75 percent of the total, and 5 percent if they equaled 50 percent of total purchases; and with offering illegal inducements to customers to handle its said products exclusively by (a) utilizing aforesaid sales program, (b) granting a 10 percent rebate to customers who agreed to purchase solely from it, and (c) buying up their stocks of competitive products and selling them to competitors' distributors at less than cost or much less than the prices charged by competitors.

Following acceptance of an agreement containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on September 11 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Maguire Industries, Inc., a corporation, its officers, representatives, agents and employees, directly or by any corporate or other device, in or in connection with the sale, for replacement purposes of electronic components including transformers and coils, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products and supplies of like grade and quality by selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

It is further ordered, That respondent Maguire Industries, Inc., a corporation, and its officers, representatives, agents, and employees, directly or by any corporate or other device in, or in connection with, the course and conduct of its business of selling electronic components, including transformers and coils, for replacement purposes, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Granting or offering to grant a lower price, by means of a greater annual rebate or otherwise, to any customer for purchasing a greater percentage of its total requirements of any said product from respondent.

(b) Granting or offering to grant a lower price to any customer for agreeing to purchase all of its requirements of any said product from respondent.

(c) Purchasing from any customer or prospective customer said customer's stocks of competing electronic components including transformers and coils.

(d) Selling or offering to sell competitive electronic components, including transformers and coils, at prices lower than the prices charged by respondent's competitors for the same products or at prices below the cost of such products to the respondent.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: September 11, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[P. R. Doc. 58-8340; Filed, Oct. 8, 1958;
8:48 a. m.]

[Docket 7149 etc.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

GLASER & YOFFE, INC., ET AL.

In the matter of Glaser & Yoffe, Inc., et al., Docket 7149; Edward H. Baker, Docket 7174; R. C. Harvey Company et al., Docket 7227; S. Freedman & Son, Inc., et al., Docket 7228; Krintzman Dusting Mills Co., Inc., et al., Docket 7229; The B. P. Cooley Company et al., Docket 7230; A. Caplan Dusting Mill, Inc., et al., Docket 7231; John T. Lodge & Company, Inc., et al., Docket 7232; J. Eisenberg, Inc., et al., Docket 7233; M. Salter & Sons Co., et al., Docket 7234.

Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: Wool Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1190 Composition: Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition: Wool Products Labeling Act; § 13.1900 Source or origin: Wool Products Labeling Act: *Maker or seller, etc.*

[Cease and desist orders: Edward H. Baker, Springfield, Vt., Docket 7174; R. C. Harvey Company et al., Waltham, Mass., Docket 7227; S. Freedman & Son, Inc., et al., Worcester, Mass., Docket 7228; The B. P. Cooley Company et al., Stafford Springs, Conn., Docket 7230; John T. Lodge & Company, Inc., et al., Watertown, Mass., Docket 7231; J. Eisenberg, Inc., et al., New York, N. Y., Docket 7232; M. Salter & Sons Co., et al., Saugus, Mass., Docket 7233; September 11, 1958]

Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition: Wool Products Labeling Act; § 13.1900 Source or origin: Wool Products Labeling Act: *Maker or seller, etc.*

[Cease and desist orders: Krintzman Dusting Mills Co., Inc., et al., North Oxford, Mass., Docket 7229; and A. Caplan Dusting Mill, Inc., et al., Newport, N. H., Docket 7231; September 11, 1958]

Subpart—Furnishing false guaranties: § 13.1053 Furnishing false guaranties: Wool Products Labeling Act. Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: Wool Products

Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition: Wool Products Labeling Act; § 13.1900 Source or origin: Wool Products Labeling Act: *Maker or seller, etc.*

[Cease and desist order, Glaser & Yoffe, Inc., et al., Natick, Mass., Docket 7149, September 11, 1958]

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U. S. C. 45, 68-68 (c))

Ten manufacturers of woolen waste in the northeastern States simultaneously accepted consent orders requiring them to cease overstating the amount of wool contained in their products. All the manufacturers also waived service of the initial decisions and the thirty-day waiting period before they could become the Commission's decisions. Eight companies waived service of the complaints, which were announced simultaneously with the orders: in two cases, Glaser & Yoffe, Inc., et al., Docket 7149, and Edward H. Baker, Docket 7174, the complaints were issued previously.

The orders to cease and desist in the seven following cases: Edward H. Baker, Docket 7174; R. C. Harvey Company et al., Docket 7227; S. Freedman & Son, Inc., et al., Docket 7228; The B. P. Cooley Company et al., Docket 7230; John T. Lodge & Company, Inc., et al., Docket 7231; J. Eisenberg, Inc., et al., Docket 7232; M. Salter & Sons Co., et al., Docket 7233; and M. Salter & Sons Co., et al., Docket 7234, read as follows:

It is ordered, That (the above-named respondents) forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

2. Failing to securely affix to, or place on, each such product, a stamp, tag or label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total weight of such wool products exclusive of ornamentation, not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling or adulterating matter.

(c) The name or registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That (the same respondents) do forthwith cease and desist from:

Misrepresenting the character or amount of the constituent fibers contained in such products, or invoices or

shipping memoranda applicable thereto, or in any other manner.

The orders in Glaser & Yoffe, Inc., et al., Docket 7149; Krintzman Dusting Mills Co., Inc., et al., Docket 7229; and A. Caplan Dusting Mill, Inc., et al., Docket 7231, do not include paragraph "1" of the order above requiring cessation of false labeling, and Glaser & Yoffe, Inc., et al., are required additionally to cease:

Furnishing false guaranties that wool waste or other wool products (as "wool products" are defined in the Wool Products Labeling Act) are not misbranded under the provisions of the Wool Products Labeling Act, when there is reason to believe that the wool products so guaranteed may be introduced, sold, transported or distributed in commerce.

By "Decision of the Commission", etc., in each case, reports of compliance were required as follows:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, (these orders,) file with the Commission a report (reports) in writing setting forth in detail the manner and form in which they have complied with the order (orders) to cease and desist.

Issued: September 12, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[P. R. Doc. 58-8341; Filed, Oct. 8, 1958;
8:48 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

APPLE POMACE CONTAINING DDT

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 701 (a), 52 Stat. 1055, as amended; 21 U. S. C. 371) and delegated to the Commissioner of Food and Drugs by the Secretary (22 F. R. 1045), and pursuant to the Administrative Procedure Act (sec. 3, 60 Stat. 237; 5 U. S. C. 1002), the following statement of policy is issued:

§ 3.207 Apple pomace containing DDT is not suitable as feed for dairy animals and may not be suitable as feed for meat animals. (a) Investigations by the Food and Drug Administration show that apple pomace containing substantial amounts of DDT has been used as feed for dairy and meat animals. Section 120.1 (f) of this chapter, issued pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (68 Stat. 511; 21 U. S. C. 346a), and section 409 of that act (72 Stat. 1784 (Public Law 85-929)) would render illegal any apple pomace for animal feeding that contains DDT in excess of the 7 parts per million fixed for apples by § 120.101 of this chapter. It has been established that the feeding

of apple pomace containing DDT will contribute residues of DDT to the fat of meat animals and to milk of dairy animals.

(b) There is no tolerance for DDT in milk. Apple pomace containing DDT should not be fed to dairy animals, since it has been established that the ingestion by them of even small amounts of DDT results in contamination of the milk with this pesticide. Apple pomace containing any amount of DDT is unsuitable as a feed or an ingredient of mixed feeds for dairy animals and should not be represented, sold, or used for that purpose.

(c) There is an established legal tolerance of 7 parts per million for residues of DDT in or on the fat of meat from cattle, sheep, and hogs (§ 120.147 of this chapter). Animals that consume DDT may accumulate considerably more of the chemical in their fat than is present in the feed itself, and a long time may be required on a diet free of DDT to reduce excessive residues to the tolerance level. It has not been established under what conditions of feeding, if any, apple pomace containing less than 7 parts per million of DDT can be fed to animals without causing the meat from such animals to contain residues in excess of the tolerance. Therefore, unless a grower of meat animals is in a position to establish that the DDT residue in the apple pomace and the conditions of feeding are such that the meat from such animals will be within the established tolerance, apple pomace should not be used in the feeding of meat animals.

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies secs. 402, 406, 409, 52 Stat. 1046, 1049, as amended, 68 Stat. 511, 72 Stat. 1784; 21 U. S. C. 342, 346, 346a.)

Dated: October 2, 1958.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F. R. Doc. 58-8328; Filed, Oct. 8, 1958;
8:45 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter B—Estate and Gift Taxes

[T. D. 6321]

PART 24—CERTAIN ESTATE TAX MATTERS UNDER SMALL BUSINESS TAX REVISION ACT OF 1958

TEMPORARY REGULATIONS RELATING TO EX- TENSION OF TIME FOR PAYMENT OF ESTATE TAX WHERE ESTATE CONSISTS LARGELY OF INTEREST IN CLOSELY HELD BUSINESS

The following rules, prescribed under the Small Business Tax Revision Act of 1958, 72 Stat. 1676, relate to certain elections by executors under the provisions of such Act.

The rules set forth herein are temporary rules designed to inform executors as to how, when, and where to make the election permitted under section 206 of the Small Business Tax Revision Act of 1958. More comprehensive rules with

respect to the election will be incorporated in subsequent regulations under the act. Rules with respect to other acts required or permitted by other provisions of the act will be covered by subsequent regulations.

In order to prescribe temporary rules under section 6166 of the Internal Revenue Code of 1954, as added by section 206 (a) of the Small Business Tax Revision Act of 1958, with respect to the manner in which an executor may elect to pay in installments the portion of the estate tax attributable to the inclusion in a decedent's gross estate of an interest in a closely held business, the following regulations are hereby adopted:

§ 24.1-1 *Extension of time for payment of estate tax where estate consists largely of interest in closely held business*—(a) *In general.* Section 6166 provides that under certain conditions where an interest in a closely held business is included in the gross estate of a decedent who was a citizen or resident of the United States at the time of his death, the executor may elect to pay in installments part or all of the Federal estate tax imposed by section 2001. See section 6166 for the definition of an interest in a closely held business, the limitation placed on the amount which may be paid in installments, the number of installments in which the tax may be paid, and the circumstances under which the privilege of paying the tax in installments will terminate. The election shall be exercised by filing notice of election to pay the tax in installments with the district director.

(b) *Where due date of return is after September 2, 1958.* If the due date of the return is after September 2, 1958, an election to pay the estate tax in installments will apply both to the tax shown on the return and to any deficiency in tax assessed in connection therewith. The notice of election to pay the tax in installments shall be filed on or before the due date of the return. See § 20.6075-1 of this chapter (estate tax regulations) for the due date of the return. However, if the due date for filing the return is after September 2, 1958, but before November 3, 1958, the election will be considered as timely made if the notice of election is filed with the district director on or before November 3, 1958.

(c) *Where due date of return is on or before September 2, 1958.* If the due date of the return is on or before September 2, 1958, an election by the executor to pay estate tax in installments will apply only to a deficiency in tax assessed after September 2, 1958. See § 20.6075-1 of this chapter (estate tax regulations) for the due date of the return. The notice of election to pay the deficiency in installments shall be filed not later than 60 days after the issuance of notice and demand by the district director for the payment of the deficiency. The election described in this paragraph may be made only if the decedent died after August 16, 1954.

(d) *Form of notice of election.* The notice of election to pay the estate tax in installments may be in the form of a letter addressed to the district director. The executor shall state in the notice

the amount of tax which he elects to pay in installments, and the total number of installments (including in a case described in paragraph (b) of this section the installment due 15 months after the date of the decedent's death, and including in a case described in paragraph (c) of this section those installments the dates for payment of which would have arrived within the meaning of section 6166 (1) in which he elects to make the payment of such tax. The properties in the gross estate which constituted the decedent's interest in a closely held business should be listed in the notice, and identified by the schedule and item number at which they appear on the estate tax return. The notice should set forth the facts which formed the basis for the executor's conclusion that the estate qualifies for the payment of the estate tax in installments.

(Sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Interprets or applies sec. 6166, Pub. Law 85-866, 85th Cong.; 72 Stat. 1681.)

Because the election provided in section 6166 must in some cases be exercised within 60 days after the enactment of section 6166, it is found impracticable to issue this Treasury decision with notice and public procedure thereon under section 4 (a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4 (c) of that act.

[SEAL] LEO SPEER,
Acting Commissioner of
Internal Revenue.

Approved: October 3, 1958.

FRED C. SCHIBNER, JR.,
Acting Secretary of the Treasury.

[F. R. Doc. 58-8352; Filed, Oct. 8, 1958;
8:50 a. m.]

TITLE 41—PUBLIC CONTRACTS

Chapter II—Division of Public Con- tracts, Department of Labor

PART 201—GENERAL REGULATIONS

OVERTIME

Pursuant to authority under section 4 of the Walsh-Healey Public Contracts Act, as amended (49 Stat. 2036; 41 U. S. C. 35 et seq.), notice is hereby given of the deletion of the "note" appended to § 201.103 of Title 41 of the Code of Federal Regulations. The interpretative rule stated in said note has been amended and may now be found in section 42 (e) (1) of the Walsh-Healey Public Contracts Act, Rulings and Interpretations No. 3 (20 F. R. 5685).

As this amendment concerns an interpretative rule, and notice and hearing or public procedure are not required by Statute, it shall be effective immediately upon publication in the FEDERAL REGISTER.

(Sec. 4, 49 Stat. 2036; 41 U. S. C. 38)

Signed at Washington, D. C., this 1st day of October 1958.

CLARENCE T. LUNDQUIST,
Administrator.

[F. R. Doc. 58-8337; Filed, Oct. 8, 1958;
8:47 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 1732]

[Fairbanks 014424]

ALASKA

Correction

In F. R. Doc. 58-7725, appearing at page 7384 of the issue for Tuesday, September 23, 1958, the following change should be made:

In the 11th line of the land description, "N. 33°03' E." should read "N. 35°03' E."

TITLE 47—TELECOMMUNICATIONS

Chapter I—Federal Communications Commission

[FCC 58-936]

PART 3—RADIO BROADCAST SERVICES

USE OF BROADCAST FACILITIES BY CANDIDATES FOR PUBLIC OFFICE

OCTOBER 6, 1958.

On September 8, 1954, the Commission issued a Public Notice (FCC 54-1155) entitled "Use of Broadcast Facilities by Candidates for Public Office." Experience has shown that this document has been of great assistance to candidates and broadcasters in understanding their rights and obligations under section 315 of the Communications Act of 1934, as amended. Since the above date, many interpretations of section 315 and of its rules have been issued by the Commission. These interpretations have been reviewed carefully; cumulative and repetitious rulings have not been reported while significant rulings have been added to this document. At the same time, a small number of editorial and other revisions have been made with respect to some of the interpretations previously issued.

The information contained herein does not purport to be a discussion of every problem that may arise in the political broadcast field. It is rather a codification of the determinations of the Commission with respect to the problems which have been presented to it and which appear likely to be involved in future campaigns. The purpose of this report is the clarification of licensee responsibility and course of action when situations discussed herein are encountered. In this way, resort to the Commission may be obviated in many instances, and time—which is of such importance in political campaigns—will be conserved. We do not mean to preclude inquiries to the Commission when there is a bona fide doubt as to a licensee's obligations under section 315. But it is believed that the following discussion will, in many instances, remove the need for such inquiries and that licensees will be able to take the necessary prompt action in these cases involving election

campaigns in accordance with the interpretations and positions set forth below.

It is to be emphasized that this discussion relates solely to obligations of broadcast licensees under section 315 of the Communications Act and is not intended to treat with the wholly separate question of the treatment by broadcast licensees in the public interest of political or other controversial programs or discussions not falling within the specific provisions of that section. With respect to the responsibilities of broadcast stations for insuring fair and balanced presentation of programs not coming within section 315, but relating to important public issues of a controversial nature including political broadcasts, licensees are referred to the Commission's Report, "Editorializing by Broadcast Licensees" (Vol. 1, Part 3, R. R. 91-201) and the cases cited therein. In this respect it is particularly important that licensees recognize that the special obligations imposed upon them by the provisions of section 315 of the Communications Act with respect to certain types of political broadcasts do not in any way limit the applicability of general public interest concepts of political broadcasts not falling within the provisions of section 315 of the Communications Act. On the contrary, in view of the obvious importance of such programming to our system of representative government it is clear that these precepts, as set forth in the Report referred to above, are of particular applicability to such programming.

We have adopted a question-and-answer format as an appropriate means of delineating the section 315 problems. Wherever possible, references to Commission decisions or rulings are made so that the researcher may, if he desires, profit by the more thorough or expansive statement of the Commission's position found in such decisions. Copies of rulings not otherwise available may be found in a "Political Broadcast" folder kept in the Commission's Public Reference Room. Citations in "R. R." refer to Pike and Fischer, Radio Regulations.

I. *The statute.* Section 315 of the Communications Act of 1934, as amended, provides as follows:

Sec. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the

¹A few of the questions taken up within have been presented to the Commission informally—that is, through telephone conversations or conferences with station representatives. They are set out in this Report because of the likelihood of their recurrence and the fact that no extended Commission discussion is necessary to dispose of them; the answer in each case is clear from the language of section 315.

charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

II. *The Commission's rules and regulations with respect to political broadcasts.* The Commission's rules and regulations with respect to political broadcasts coming within section 315 of the Communications Act are set forth in §§ 3.120 (AM), 3.290 (FM), 3.590 (Non-Commercial Educational FM), and 3.657 (TV), respectively. These provisions are identical (except for elimination of any discussion of charges in § 3.590 relating to non-commercial educational FM stations) and read as follows:

Broadcasts by candidates for public office—

(a) *Definitions.* A "legally qualified candidate" means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, state or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who

(1) Has qualified for a place on the ballot or

(2) Is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and

(i) Has been duly nominated by a political party which is commonly known and regarded as such, or

(ii) Makes a substantial showing that he is a bona fide candidate for nomination or office, as the case may be.

(b) *General requirements.* No station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all such other candidates for that office to use such facilities; provided, that such licensee shall have no power of censorship over the material broadcast by any such candidate.

(c) *Rates and practices.* (1) The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall, in each case, be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office.

(2) In making time available to candidates for public office no licensee shall make any discrimination between candidates in charges, practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) *Records; inspection.* Every licensee shall keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition

made by the licensee of such requests, and the charges made, if any, if request is granted. Such records shall be retained for a period of two years.

In addition, the attention of licensees is directed to the provisions of §§ 3.119 (b), 3.289 (b) and 3.654 (b) which provide in identical language:

(b) In the case of any political program or any program involving the discussion of public controversial issues for which any records, transcriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly, to a station as an inducement to the broadcasting of such program, an announcement shall be made both at the beginning and conclusion of such program on which such material or services are used that such records, transcriptions, talent, scripts, or other material or services have been furnished to such station in connection with the broadcasting of such program; provided, however, that only one such announcement need be made in the case of any such program of five minutes' duration or less, which announcement may be made either at the beginning or the conclusion of the program.

III. Programs coming within section 315. In general, any use of broadcast facilities by a legally qualified candidate for public office, imposes an obligation on licensees to afford "equal opportunities" to all other such candidates for the same office.

A. Types of uses.

1. Q. Does section 315 apply to one speaking for or on behalf of the candidate, as contrasted with the candidate himself?

A. No. The section applies only to legally qualified candidates. Candidate A has no legal right under section 315 to demand time where B, not a candidate, has spoken against A or in behalf of another candidate. (Felix v. Westinghouse Radio Stations, 186 F. 2d 1, cert. den. 341 U. S. 909.)

2. Q. Does section 315 confer rights on a political party as such?

A. No. It applies in favor of legally qualified candidates for public office, and is not concerned with the rights of political parties, as such. (Letter to National Labor Party, dated May 8, 1957.)

3. Q. Does section 315 require stations to afford "equal opportunities" in the use of their facilities in support of or in opposition to a public question to be voted on in an election?

A. No. Section 315 has no application to the discussion of political issues, as such, but is concerned with the use of broadcast stations by legally qualified candidates for public office.

B. What constitutes a "use" of broadcast facilities entitling opposing candidates to "equal opportunities"?

4. Q. If a legally qualified candidate secures air time but does not discuss matters directly related to his candidacy, is this a use of facilities under section 315?

A. Yes. Section 315 does not distinguish between the uses of broadcast time by a candidate, and the licensee is not authorized to pass on requests for time by opposing candidates on the basis of the licensee's evaluation of whether the original use was or was not in aid of a candidacy. (WMCA, Inc., 7 R. R. 1132.)

5. Q. Must a broadcaster give equal time to a candidate whose opponent has broadcast in some other capacity than as a candidate?

A. Yes. For example, a weekly report of a Congressman to his constituents via radio or television is a broadcast by a legally qualified candidate for public office as soon as he becomes a candidate for reelection, and his

opponent must be given "equal opportunities" for time on the air. Any "use" of a station by a candidate, in whatever capacity, entitles his opponent to "equal opportunities." (Station KNGS, 7 R. R. 1130.)

6. Q. If a candidate appears on a variety program for a very brief bow or statement, are his opponents entitled to "equal opportunities" on the basis of this brief appearance?

A. Yes. All appearances of a candidate, no matter how brief or perfunctory, are a "use" of a station's facilities within section 315.

7. Q. If a candidate is accorded station time for a speech in connection with a ceremonial activity or other public service, is an opposing candidate entitled to equal utilization of the station's facilities?

A. Yes. Section 315 contains no exception with respect to broadcasts by legally qualified candidates carried "in the public interest" or as a "public service." It follows that the station's broadcast of the candidate's speech was a "use" of the facilities of the station by a legally qualified candidate giving rise to an obligation by the station under section 315 to afford "equal opportunities" to other legally qualified candidates for the same office. (Letter to CBS (WBBM), dated October 31, 1952; Letter to KFI, dated October 31, 1952.)

8. Q. If a station arranges for a debate between the candidates of two parties, or presents the candidates of two parties in a press conference format or so-called forum program, is the station required to make equal time available to other candidates?

A. Yes. The appearance of candidates on the above types of programs constitutes a "use" of the licensee's facilities by legally qualified candidates and, therefore, other candidates for the same office are entitled to "equal opportunities." (Letter to Harold Oliver, dated October 31, 1952; Letter to Julius F. Brauner, dated October 31, 1952.)

9. Q. Are acceptance speeches by successful candidates for nomination for the candidacy of a particular party for a given office, a use by a legally qualified candidate for election to that office?

A. Yes. Where the successful candidate for nomination becomes legally qualified as a candidate for election as a result of the nomination. (Progressive Party, 7 R. R. 1800.)

10. Q. Does section 315 apply to broadcasts by a legally qualified candidate where such broadcasts originate and are limited to a foreign station whose signals are received in the United States?

A. No. Section 315 applies only to stations licensed by the FCC. (Letter to Gregory Pillion, dated July 19, 1955.)

11. Q. If a station owner, or a station advertiser, or a person regularly employed as a station announcer were to make any appearances over a station after having qualified as a candidate for public office, would section 315 apply?

A. Yes. Such appearances of a candidate are a "use" under section 315. (Letters to KUGN, dated April 2, 1958; to KTTV, 14 R. R. 1227; and to Kenneth Spengler, 14 R. R. 1226b, respectively.)

12. Q. When a station, as part of a newscast, uses film clips showing a legally qualified candidate participating as one of a group in official ceremonies and the newscaster, in commenting on the ceremonies, mentions the candidate and others by name and describes their participation, has there been a "use" under section 315?

A. No. Since the facts clearly showed that the candidate had in no way directly or indirectly initiated either filming or presentation of the event, and that the broadcast was nothing more than a routine newscast by the station in the exercise of its judgment as to newsworthy events. (Letter to Allen Blondy, 14 R. R. 1199.)

IV. Who is a legally qualified candidate?

13. Q. How can a station know which candidates are "legally qualified?"

A. The determination as to who is a legally qualified candidate for a particular public office within the meaning of section 315 and the Commission's rules must be determined by reference to the law of the state in which the election is being held. In general, a candidate is legally qualified if he can be voted for in the state or district in which the election is being held, and, if elected, is eligible to serve in the office in question.

14. Q. Need a candidate be on the ballot to be legally qualified?

A. Not always. The term "legally qualified candidate" is not restricted to persons whose names appear on the printed ballot; the term may embrace persons not listed on the ballot if such persons are making a bona fide race for the office involved and the names of such persons, or their electors can, under applicable law, be written in by voters so as to result in their valid election. The Commission recognizes, however, that the mere fact that any name may be written in does not entitle all persons who may publicly announce themselves as candidates to demand time under section 315; broadcast stations may make suitable and reasonable requirements with respect to proof of the bona fide nature of any candidacy on the part of applicants for the use of facilities under section 315. (§§ 3.120, 3.290, 3.657; Socialist Labor Party, 7 R. R. 766; Columbia Broadcasting System, Inc., 7 R. R. 1189; Press Release of November 26, 1941 (Mimeo 55732).)

15. Q. May a station deny a candidate "equal opportunities" because it believes that the candidate has no possibility of being elected or nominated?

A. No. Section 315 does not permit any such subjective determination by the station with respect to a candidate's chances of nomination or election. (Columbia Broadcasting System, Inc., 7 R. R. 1189.)

16. Q. May a person be considered to be a legally qualified candidate where he has made only a public announcement of his candidacy and has not yet filed the required forms or paid the required fees for securing a place on the ballot in either the primary or general elections?

A. The answer depends on applicable state law. In some states persons may be voted for by electorate whether or not they have gone through the procedures required for getting their names placed on the ballot itself. In such a state, the announcement of a person's candidacy—if determined to be bona fide—is sufficient to bring him within the purview of section 315. In other states, however, candidates may not be "legally qualified" until they have fulfilled certain prescribed procedures. The applicable state laws and the particular facts surrounding the announcement of the candidacy are determinative. (Letter to Senator Earle C. Clements, dated February 2, 1954.)

17. Q. Must a station make time available upon demand to a candidate of the Communist Party, or a candidate who is a member of the Communist Party, if it has afforded time to that candidate's opponents for the office in question?

A. If the person involved is a legally qualified candidate for the office he is seeking, section 315 requires that "equal opportunities" be afforded him. It will be recognized that who is a legally qualified candidate is dependent upon federal, state, and local law pertaining to the elective process and is not based upon provision of the Communications Act or the rules of the Commission.

The question of the specific applicability of these principles, in the light of the enactment of the Communist Control Act of 1954, to candidates of the Communist Party or who

are members of the Communist Party has not yet been determined.

18. Q. When is a person a legally qualified candidate for nomination as the candidate of a party for President or Vice President of the United States?

A. In view of the fact that a person may be nominated for these offices by the conventions of his party without having appeared on the ballot of any state having presidential primary elections, or having any pledged votes prior to the convention, or even announcing his willingness to be a candidate, no fixed rule can be promulgated in answer to this question. Whether a person so claiming is in fact a bona fide candidate will depend on the particular facts of each situation, including consideration of what efforts, if any, he has taken to secure delegates or preferential votes in state primaries. It cannot, however, turn on the licensee's evaluation of the claimant's chances for success. (Letter of May 28, 1952 to Julius F. Brauner.)

19. Q. Has a claimant under section 315 sufficiently established his legal qualifications when the facts show that after qualifying for a place on the ballot for a particular office in the primary, he notified state officials of his withdrawal therefrom and then later claimed he had not really intended to withdraw, and where the facts further indicated that he was supporting another candidate for the same office and was seeking the nomination for an office other than the one for which he claimed to be qualified?

A. No. Where a question is raised concerning a claimant's legal qualification, it is incumbent on him to prove that he is in fact legally qualified. The facts here did not constitute an unequivocal showing of legal qualification. (Letter to Lar Daly, dated April 11, 1956; letter to American Vegetarian Party, dated November 8, 1956.)

20. Q. If a candidate establishes his legal qualifications only after the date of nomination or election for the office for which he was contending, is he entitled to equal opportunities which would have been available had he timely qualified?

A. No, for once the date of nomination or election for an office has passed, it cannot be said that one who failed timely to qualify therefor is still a "candidate." The holding of the primary or general election terminates the possibility of affording "equal opportunities," thus moots the question of what rights the claimant might have been entitled to under section 315 before the election. (Letter to Socialist Workers' Party, dated December 13, 1956; letter to Lar Daly, 14 R. R. 713, appeal sub. nom. Daly v. U. S., Case No. 11,946 (C. A. 7th Cir.) dismissed as moot Mar. 7, 1957; cert. den. 355 U. S. 826.)

21. Q. Under the circumstances stated in the preceding question, is any post-election remedy available to the candidate, before the Commission, under section 315?

A. None, insofar as a candidate may desire retroactive "equal opportunities." But this is not to suggest that a station can avoid its statutory obligation under section 315 by waiting until an election has been held and only then disposing of demands for "equal opportunities." Idem.

22. Q. When a state Attorney General or other appropriate state official having jurisdiction to decide a candidate's legal qualification has ruled that a candidate is not legally qualified under local election laws, can a licensee be required to afford such "candidate" "equal opportunities" under section 315?

A. In such instances, the ruling of the state Attorney General or other official will prevail, absent a judicial determination. (Telegram to Ralph Muncy, November 5, 1945; letter to Socialist Workers' Party, dated November 23, 1956.)

V. When are candidates opposing candidates?

23. Q. What public offices are included within the meaning of section 315?

A. Under the Commission's rules, section 315 is applicable to both primary and general elections, and public offices include all offices filled by special or general election on a municipal, county, state or national level as well as the nomination by any recognized party of a candidate for such an office.

24. Q. May the station under section 315 make time available to all candidates for one office and refuse all candidates for another office?

A. Yes. The "equal opportunities" requirement of section 315 is limited to all legally qualified candidates for the same office.

25. Q. If the station makes time available to candidates seeking the nomination of one party for a particular office, does section 315 require that it make equal time available to the candidates seeking the nomination of other parties for the same office?

A. No, the Commission has held that while both primary elections or nominating conventions and general elections are comprehended within the terms of section 315, the primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties, and, therefore, insofar as section 315 is concerned, "equal opportunities" need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention. (KWFT, Inc., 4 R. R. 885; Letter to Arnold Petersen, 11 R. R. 234; Letter to WCBL, April 3, 1953.)

26. Q. If the station makes time available to all candidates of one party for nomination for a particular office, including the successful candidate, may candidates of other parties in the general election demand an equal amount of time under section 315?

A. No. For the reason given above. (KWFT, Inc., 4 R. R. 885.)

VI. What constitutes equal opportunities?

27. Q. Generally speaking, what constitutes "equal opportunities?"

A. Under section 315 and §§ 3.120, 3.290, and 3.657 of the Commission's rules, no licensee shall make any discrimination in charges, practices, regulations, facilities, or services rendered to candidates for a particular office.

28. Q. Is a licensee required or allowed to give time free to one candidate where it had sold time to an opposing candidate?

A. The licensee is not permitted to discriminate between the candidates in any way. With respect to any particular election it may adopt a policy of selling time, or of giving time to the candidates free of charge, or of giving them some time and selling them additional time. But whatever policy it adopts it must treat all candidates for the same office alike with respect to the time they may secure free and that for which they must pay.

29. Q. Is a station's obligation under section 315 met if it offers a candidate the same amount of time an opposing candidate has received, where the time of the day or week afforded the first candidate is superior to that offered his opponent?

A. No. The station in providing "equal opportunities" must consider the desirability of the time segment allotted as well as its length. And while there is no requirement that a station afford candidate B exactly the same time of day on exactly the same day of the week as candidate A, the time segments offered must be comparable as to desirability.

30. Q. If candidate A has been afforded time during early morning, noon and eve-

ning hours, does a station comply with section 315 by offering candidate B time only during early morning and noon periods?

A. No. However, the requirements of comparable time do not require a station to make available exactly the same time periods, nor the periods requested by candidate B. (Letter to D. L. Grace, dated July 3, 1958.)

31. Q. Is it necessary for a station to advise a candidate or a political party that time has been sold to other candidates?

A. No. The law does not require that this be done. If a candidate inquires, however, the facts must be given him. It should be noted here that a station is required to keep a public record of all requests for time by or on behalf of political candidates, together with a record of the disposition and the charges made, if any, for each broadcast. (§§ 3.120 (d), 3.290 (d), 3.657 (d).)

32. Q. If a station offers free time to opposing candidates and one candidate declines to use the time given him, are other candidates for that office foreclosed from availing themselves of the offer?

A. No. The refusal of one candidate does not foreclose other candidates wishing to use the time offered. However, whether the candidate initially declining the offer could later avail himself of "equal opportunities" would depend on all the facts and circumstances. (Letter to Leonard Marks, 14 R. R. 65.)

33. Q. If one political candidate buys station facilities more heavily than another, is a station required to call a halt to such sales because of the resulting imbalance?

A. No. Section 315 requires only that all candidates be afforded "equal opportunities" to use the facilities of the station. (Letter to Mrs. M. R. Oliver, 11 R. R. 239.)

34. Q. If the candidate has received free time for a period of time and subsequently a second candidate announces his candidacy, is the second candidate entitled to equal facilities retroactive to the date when the first candidate announced his candidacy?

A. Normally, yes. Once the station has made time available to one qualified candidate, its obligation to provide equal facilities to future candidates begins. A candidate cannot, however, delay his request for time and expect to use the "equal opportunities" provision to force a station to turn over most of the last few pre-election days to him in order to "saturate" pre-election broadcast time. (Letter to Congressman Hunter, dated May 28, 1952; Letter to Congressman Frelinghuysen, 11 R. R. 245.)

35. Q. If a station has a policy of confining political broadcasts to sustaining time, but has so many requests for political time that it cannot handle them all within its sustaining schedule, may it refuse time to a candidate whose opponent has already been granted time, on the basis of its established policy of not cancelling commercial programs in favor of political broadcasts?

A. No. The station cannot rely upon its policy if the latter conflicts with the "equal opportunities" requirement of section 315. (Stephens Betg. Co., 3 R. R. 1.)

36. Q. If one candidate has been nominated by Parties A, B, and C, while a second candidate for the same office is nominated only by Party D, how should time be allocated as between the two candidates?

A. Section 315 has reference only to the use of facilities by persons who are candidates for public office and not to the political parties which may have nominated such candidates. Accordingly, if broadcast time is made available for the use of a candidate for public office, the provisions of section 315 require that "equal opportunities" be afforded each person who is a candidate for the same office, without regard to the number of nominations that any particular candidate may have. (Letter to Thomas W. Wilson, dated October 31, 1946.)

37. Q. If a station broadcasts a program sponsored by a commercial advertiser which includes one or more qualified candidates as speakers or guests, what are its obligations with respect to affording "equal opportunities" to other candidates for the same office?

A. If candidates are permitted to appear, without cost to themselves, on programs sponsored by commercial advertisers, opposing candidates are entitled to receive comparable time, also at no cost. (Letter to Senator Monroney, 11 R. R. 451.)

38. Q. Where a candidate for office in a state or local election appears on a national network program, is an opposing candidate for the same office entitled to equal facilities over stations which carried the original program and serve the area in which the election campaign is occurring?

A. Yes. Under such circumstances an opposing candidate would be entitled to time on such stations. (Letter to Senator Monroney, dated October 9, 1952.)

39. Q. Where a candidate appears on a particular program—such as a regular series of forum programs—are opposing candidates entitled on demand to appear on the same program?

A. Not necessarily. The mechanics of the problem of "equal opportunities" must be left to resolution of the parties. And while factors such as the size of the potential audience because of the appearance of the first candidate on an established or popular program might very well be a matter for consideration by the parties, it cannot be said, in the abstract, that "equal opportunities" could only be provided by giving opposing parties time on the same program. (Letter to Harold Oliver, dated October 31, 1952; Letter to Julius F. Brauner, dated October 31, 1952.)

40. Q. Where a station asks candidates A and B (opposing candidates in a primary election) to appear on a debate-type program, the format of which is determined by the station but with no restrictions as to what issues or matters might be discussed, and candidate A accepts the offer and appears on the program and candidate B declines to appear on the program, is candidate B entitled to further "equal opportunities" in the use of the station's facilities within the meaning of section 315 of the act? If so, is any such obligation met by offering candidate B, prior to the primary, an opportunity to appear on a program of comparable format to that on which candidate A appeared, or is the station obligated to grant candidate B time equal to that used by candidate A on the program in question unrestricted as to format?

A. Since the station's format was reasonable in structure and the station put no restrictions on what matters and issues might be discussed by candidate B and others who appeared on the program in question, it offered candidate B "equal opportunities" in the use of its facilities within the meaning of section 315 of the act. The station's further offer to candidate B, prior to the primary, of its facilities on a "comparable format" was reasonable under the facts of the case, consistent with any continuing obligation to afford candidate B "equal opportunities" in the use of the station which he may have had. (Letter to Congressman Bob Wilson, dated August 1, 1958.)

41. Q. In affording "equal opportunities", may a station limit the use of its facilities solely to the use of a microphone?

A. A station must treat opposing candidates the same with respect to the use of its facilities and if it permits one candidate to use facilities over and beyond the microphone, it must permit a similar usage by other qualified candidates. (Letter to D. L. Grace, dated July 3, 1958.)

42. Q. Can a station contract with the committee of a political party whereby it commits itself in advance of an election to

furnish substantial blocks of time to the candidates of that party?

A. Neither section 315 nor the Commission's rules prohibit a licensee from contracting with a party for reservation of time in advance of an election. However, substantial questions as to a possible violation of section 315 would arise if the effect of such prior commitment were to disable a licensee from meeting its "equal opportunities" obligations under section 315. (Letter to Congressman Karsten, dated Nov. 25, 1955.)

VII. What limitations can be put on the use of facilities by a candidate?

43. Q. May a station delete material in a broadcast under section 315 because it believes the material contained therein is or may be libelous?

A. No. Any such action would entail censorship which is expressly prohibited by section 315 of the Communications Act. (Port Huron Bctg. Co., 4 R. R. 1; WDSU Bctg. Co., 7 R. R. 769.)

44. Q. If a legally qualified candidate broadcasts libelous or slanderous remarks, is the station liable therefor?

A. In Port Huron Bctg. Co., 4 R. R. 1, the Commission expressed an opinion that licensees not directly participating in the libel might be absolved from any liability they might otherwise incur under state law, because of the operation of section 315, which precludes them from preventing a candidate's utterances. In two recent decisions, the courts have agreed with the Commission's holding in the Port Huron case, holding that since a licensee could not censor a broadcast under section 315, Congress could not have intended to compel a station to broadcast libelous statements of a legally qualified candidate and at the same time subject itself to the risk of damage suits. (Farmers Educational & Cooperative Union of America v. WDAY, Inc., N. D., 89 N. W. 2d 102 (Petition for cert. filed); Lamb v. Sutton, Fed. Supp. (D. C. Tenn., 1958.))

45. Q. Does the same immunity apply in a case where the Chairman of a political party's campaign committee, not himself a candidate, broadcasts a speech in support of a candidate?

A. No. Licensees "are, therefore, not entitled to assert the defense that they are not liable because the speeches could not have been censored without violating section 315 and that accordingly they were not at fault in permitting the speeches to be broadcast." (Felix v. Westinghouse Radio Stations, 188 F.2d 1, cert. den. 341 U.S. 909.)

46. Q. If a candidate secures time under section 315, must he talk about a subject directly related to his candidacy?

A. No. The candidate may use the time as he deems best. To deny a person time on the ground that he was not using it in furtherance of his candidacy would be an exercise of censorship prohibited by section 315 (WMCA, Inc., 7 R. R. 1132).

47. Q. If a station makes time available to an office holder who is also a legally qualified candidate for re-election and the office holder limits his talks to non-partisan and informative material, may other legally qualified candidates who obtain time be limited to the same subjects or the same type of broadcast?

A. No. Other qualified candidates may use the facilities as they deem best in their own interest. (Letter to Congressman Allen Oakley Hunter, 11 R. R. 234.)

48. Q. May a station require an advance script of a candidate's speech?

A. Yes, provided that the practice is uniformly applied to all candidates for the same office using the station's facilities, and the station does not undertake to censor the candidate's talk. (Letter to H. A. Rosenberg, Louisville, Ky., 11 R. R. 236.)

49. Q. May a station have a practice of requiring a candidate to record his proposed broadcast at his own expense?

A. Yes. Provided again that the procedures adopted are applied without discrimination as between candidates for the same office and no censorship is attempted. (Letter to H. A. Rosenberg, Louisville, Ky., 11 R. R. 236.)

VIII. What rates can be charged candidates for programs under section 315?

50. Q. May a station charge premium rates for political broadcasts?

A. No. Section 315, as amended, provides that the charges made for the use of a station by a candidate "shall not exceed the charges made for comparable use of such stations for other purposes."

51. Q. Does the requirement that the charges to a candidate "shall not exceed the charges for comparable use" of a station for other purposes apply to political broadcasts by persons other than qualified candidates?

A. No. This requirement applies only to candidates for public office. Hence, a station may adopt whatever policy it desires for political broadcasts by organizations or persons who are not candidates for office, consistent with its obligation to operate in the public interest. (Letter to Congressman Diggs, Jr., dated March 16, 1955.)

52. Q. May a station with both "national" and "local" rates charge a candidate for local office its "national" rate?

A. No. Under §§ 3.120, 3.290 and 3.657 of the Commission's rules a station may not charge a candidate more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that within which persons may vote for the particular office for which such person is a candidate.

53. Q. Considering the limited geographical area which a member of the House of Representatives serves, must candidates for the House be charged the "local" instead of the "national" rate?

A. This question cannot be answered categorically. To determine the maximum rates which could be charged under section 315, the Commission would have to know the criteria a station uses in classifying "local" versus "national" advertisers before it could determine what are "comparable charges." In making this determination, the Commission does not prescribe rates but merely requires equality of treatment as between 315 broadcasts and commercial advertising. (Letter to Congressman Simpson, dated Feb. 27, 1957.)

54. Q. Is a political candidate entitled to receive discounts?

A. Yes. Under §§ 3.120, 3.290 and 3.657 of the Commission's rules political candidates are entitled to the same discounts that would be accorded persons other than candidates for public office under the conditions specified, as well as to such special discounts for programs coming within section 315 as the station may choose to give on a non-discriminatory basis.

55. Q. Can a station refuse to sell time at discount rates to a group of candidates for different offices who have pooled their resources to obtain a discount, even though as a matter of commercial practice, the station permits commercial advertisers to buy a block of time at discount rates for use by various businesses owned by a single advertiser?

A. Yes. Section 315 specifically provides that a station need not permit the use of its facilities by candidates, and neither that section nor the Commission's rules require a station to sell time to a group of candidates on a pooled basis, even though such may be the practice with respect to commercial advertisers. (Letter to WKBT-WKBH, dated Oct. 14, 1954.)

56. Q. If candidate A purchases ten time segments over a station which offers a discount rate for purchase of that amount of time, is candidate B entitled to the discount rate if he purchases less time than the minimum to which discounts are applicable?

A. No. A station is under such circumstances only required to make available the discount privileges to each legally qualified candidate on the same basis.

57. Q. If a station has a "spot" rate of two dollars per "spot" announcement, with a rate reduction to one dollar if 100 or more such "spots" are purchased on a bulk time sales contract, and if one candidate arranges with an advertiser having such a bulk time contract to utilize five of these spots at the one dollar rate, is the station obligated to sell the candidates of other parties for the same office time at the same one dollar rate?

A. Yes. Other legally qualified candidates are entitled to take advantage of the same reduced rate. (Letter to Senator Monroney, dated October 16, 1952.)

58. Q. Where a group of candidates for different offices pool their resources to purchase a block of time at a discount, and an individual candidate opposing one of the group seeks time on the station, to what rate is he entitled?

A. He is entitled to be charged the same rate as his opponent since the provisions of section 315 run to the candidates themselves and they are entitled to be treated equally with their individual opponents. (Report and Order, Docket 11092, 11 R. R. 1501.)

59. Q. Is there any prohibition against the purchase by a political party of a block of time for several of its candidates, for allocation among such candidates on the basis of personal need, rather than on the amount each candidate has contributed to the party's campaign fund?

A. There is no prohibition in section 315 or the Commission's rules against the above

practices. It would be reasonable to assume that the group time used by a candidate is, for the purposes of section 315, time paid for by the candidate through the normal device of a recognized political campaign committee, even though part of the campaign funds was derived from sources other than the candidates' contributions. (Letter to Edward de Grazia, dated Oct. 14, 1954.)

60. Q. When a candidate and his immediate family own all the stock in a corporate licensee and the candidate is the president and general manager, can he pay for time to the corporate licensee from which he derives his income and have the licensee make a similar charge to an opposing candidate?

A. Yes. The fact that a candidate has a financial interest in a corporate licensee does not affect the licensee's obligation under section 315. Thus, the rates which the licensee may charge to other legally qualified candidates will be governed by the rate which the stockholder candidate actually pays to the licensee. If no charge is made to the stockholder candidate, it follows that other legally qualified candidates are entitled to equal time without charge. (Letter to Charles W. Stratton, dated March 18, 1957.)

IX. Issuance of interpretations of section 315 by the Commission.

61. Q. Under what circumstances will the Commission consider issuing declaratory orders, interpretive rulings or advisory opinions with respect to section 315?

A. Section 5 (d) of the Administrative Procedure Act, Title 5, U. S. C. A., provides that "The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty." However, agencies are not required to issue such orders merely because a request is made therefor. The grant of authority to agencies to issue declaratory

orders is limited, and such orders are authorized only with respect to matters which are required by statute to be determined "on the record after opportunity for an agency hearing." See Attorney General's Manual on the Administrative Procedure Act, pp. 59, 60; also, *In re Goodman*, 4 Pike & Fischer R. R. 98. In general, the Commission limits its interpretive rulings or advisory opinions to situations where the critical facts are explicitly stated without the possibility that subsequent events will alter them. Rather, it prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for decision. (Letter to Pierson, Ball & Dowd, dated June 18, 1958.)

Adopted: October 1, 1953.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-8337; Filed, Oct. 8, 1958;
8:50 a. m.]

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service, Department of the Interior

PART 8—PROCLAMATIONS DESIGNATING AREAS CLOSED TO HUNTING

CROSS REFERENCE: For designation as closed areas under the Migratory Bird Treaty Act certain waters adjacent to Upper Mississippi River Wildlife and Fish Refuge, Iowa, Minnesota, and Wisconsin, see F. R. Doc. 58-8335, Department of the Interior, in Notices section, *infra*.

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CER Part 39]

INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1951

UNLIMITED DEDUCTION TO INDIVIDUALS OF CHARITABLE CONTRIBUTIONS

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a

case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in sections 62 and 3791 of the Internal Revenue Code of 1939 (53 Stat. 32, 467; 26 U. S. C. 62, 3791).

[SEAL]

LEO SPEER,
Acting Commissioner of
Internal Revenue.

In order to conform Regulations 118 (26 CFR (1939) Part 39) to the act of February 15, 1956 (Public Law 408, 84th Cong., 70 Stat. 15), such regulations are amended as follows:

PARAGRAPH 1. Section 39.120 is amended to read as follows:

§ 39.120 Statutory provisions; unlimited deduction for charitable and other contributions.

Sec. 120. Unlimited deduction for charitable and other contributions. In the case of an individual if in the taxable year and in eight of the ten preceding taxable years the amount of the contributions or gifts described in section 23 (a) (or corresponding provisions of prior revenue Acts) plus the amount of income (determined without regard to subchapter E, relating to tax on self-employment income), war-profits, or excess-profits taxes paid during such year in respect of such year or preceding taxable

years, exceeds 90 per centum of the taxpayer's net income for each such year, as computed without the benefit of the applicable subsection, then the 20 per centum limit imposed by section 23 (c) shall not be applicable.

[Sec. 120 as amended by sec. 208 (d) (6), Social Security Act Amendments 1950; Pub. Law 918 (81st Cong.); sec. 4 (b), Pub. Law 465 (82d Cong.); Pub. Law 408 (84th Cong.)]

Pub. Law 408 (84th Congress) (Act of February 15, 1956 (70 Stat. 15))

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 120 of the Internal Revenue Code of 1939 (relating to unlimited deduction for charitable and other contributions) is hereby amended by striking out "in each of the ten preceding taxable years" and inserting in lieu thereof "in eight of the ten preceding taxable years".

Sec. 2. (a) Except as provided in subsections (b), (c), and (d), the amendment made by the first section of this Act shall apply to all taxable years to which the Internal Revenue Code of 1939 applies.

(b) Notwithstanding any other provision of law, credit for any overpayment resulting from the amendment made by the first section of this Act shall not be allowed, and the refund of any such overpayment shall be made only if it is established to the satisfaction of the Secretary of the Treasury or his delegate—

(1) In the case of a taxpayer who has not died at the time the refund is made, that the amount of such refund is to be paid forthwith as a charitable contribution (as defined in section 170 (c) of the Internal Revenue Code of 1954), or

(2) In the case of a taxpayer who has died at the time the refund is made, that (A) an amount equal to the amount of the refund, under the terms of the decedent's will, will be transferred to any person or organization described in section 2055 of the Internal Revenue Code of 1954, and (B) an amount equal to the amount of such transfer is deductible from the value of the gross estate under such section or the corresponding provisions of the Internal Revenue Code of 1939.

No interest shall be paid upon any overpayment resulting from the amendment made by the first section of this Act.

(c) The amount of any refund made under this Act, and the payment or transfer of such amount as described in paragraph (1) or (2) of subsection (b), shall not be taken into account in determining any liability of the taxpayer or his estate for income tax or estate tax under the Federal income tax and estate tax laws.

(d) If a claim for refund relates to an overpayment on account of the amendment made by the first section of this Act, in lieu of the three-year period of limitation prescribed in section 322 (b) (1) of the Internal Revenue Code of 1939, the period shall be seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made. In the case of a claim described in this subsection, the amount of the refund may exceed the portion of the tax paid within the period prescribed in paragraph (2) or (3), whichever is applicable of section 322 (b) of such code, to the extent of the amount of the overpayment attributable to the amendment made by the first section of this Act.

PAR. 2. Paragraph (c) of § 39.120-1 is amended by deleting the words "each of the ten" and inserting the words "eight of the ten".

PAR. 3. There is inserted immediately after § 39.120-1 (c) the following:

(d) (1) The first section of Public Law 408 (84th Cong.), approved February 15, 1956, amends section 120 to provide for an unlimited deduction for charitable contributions by an individual provided the required contributions and income tax payments have been made by him in the taxable year and in eight of the ten preceding taxable years. Notwithstanding any other provision of law, no credit against any liability in respect of an internal revenue tax shall be made for an overpayment which would not result but for the provisions of the first section of Public Law 408.

(2) Notwithstanding any other provision of law, the refund of an overpayment which would result solely because of the application of the provisions of the first section of Public Law 408 shall not be made unless—

(i) In the case of a taxpayer who has not died at the time the refund is made, it is established to the satisfaction of the Commissioner that the amount of such refund is to be paid forthwith as a charitable contribution (within the meaning of section 170 (c) of the Internal Revenue Code of 1954).

(ii) In the case of a taxpayer who has died at the time the refund is made, it is established to the satisfaction of the

Commissioner that an amount equal to the amount of the refund under the terms of the will of the decedent will be transferred to a person or organization described in section 2055 of the Internal Revenue Code of 1954 and an amount equal to the amount of such transfer would, except for the provisions of section 2 (c) of Public Law 408, be deductible from the value of the gross estate under section 2055 of the Internal Revenue Code of 1954, or the corresponding provisions of the Internal Revenue Code of 1939.

For purposes of this paragraph, "the amount of such refund", "an amount equal to the amount of the refund", and "an amount equal to the amount of such transfer" need not be traceable to the refund. For example, if a decedent's will provided for a charitable bequest of \$1,000 or more, and the refund was \$1,000 or less, the requirements of subdivision (ii) of this subparagraph would be satisfied.

(3) The provisions of subparagraph (2) (i) or (ii) of this paragraph may be met in the following manner:

(i) In the case of a taxpayer who has not died at the time the refund is made, by submission in form and content satisfactory to the Commissioner of any one of the following—

(a) Evidence of the taxpayer's legally enforceable pledge to a charitable organization of the amount to be refunded.

(b) Evidence of the creation by the taxpayer of a trust, to exist pending the making of a refund or the denial of a claim therefor, in money or property in an amount not less than the amount of the refund (and maintenance of a corpus of a value not less than the amount of the refund), the terms of which provide that upon the receipt by the taxpayer of the refund the amount of the refund shall be payable to a charitable organization.

(c) An acceptable bond as prescribed by section 7101 of the Internal Revenue Code of 1954 and the regulations thereunder. Such bond shall be in an amount not less than the amount of the refund and shall be conditioned upon the payment by the taxpayer to the charitable organization of the amount of the refund within the time subsequent to the making of the refund that is prescribed in this paragraph.

(d) Evidence of actual payment (subsequent to filing a claim for refund) to a charitable organization of the amount of the refund prior to the time the refund is made.

(e) Any combination of the methods outlined in this subparagraph, provided that the sum of the amounts paid or to be paid to a charitable organization shall not be less than the amount of the refund.

In any event, there must be submitted, prior to the time the refund is made, evidence sufficient to insure that either the refund itself, or an amount not less than the amount to be refunded, has been or will be paid within six months after the refund is made to an organization described in section 170 (c) of the Internal Revenue Code of 1954.

A reasonable extension of the time for payment may be granted by the Commissioner at the request of the taxpayer. The period of such extension shall not be in excess of one year from the time the refund is made. The term "charitable organization" means an organization or organizations described in section 170 (c) of the Internal Revenue Code of 1954.

(ii) In the case of a taxpayer who has died at the time the refund is made, by submission to the Commissioner of a verified copy of the last will and testament of the decedent. Such last will and testament may provide for a specific bequest or devise to a person or organization described in section 2055 of the Internal Revenue Code of 1954. In the absence of a specific bequest, the will must provide for a residuary or other bequest or devise to such a person or organization. In either case, it must be established that the amount to be transferred under the will of the decedent will in no event be an amount of money or property less than the amount of the refund. See subparagraph (2) (ii) of this paragraph.

(4) No refund shall be made as a result of the first section of Public Law 408, unless a contribution of the refund or of the amount of the refund is made after February 14, 1956.

(5) No interest shall be paid upon any overpayment refunded as a result of the application of the first section of Public Law 408.

(6) The amount of any refund made as a result of the first section of Public Law 408, and the payment or transfer of such amount as described in subparagraph (2) (i) or (ii) of this paragraph, shall not be taken into account in determining any liability of the taxpayer or his estate for income tax or estate tax under the Federal income tax and estate tax laws. Thus, a refund will not be taken into account for any taxable year for purposes of determining whether the sum of the contributions and taxes paid in a taxable year is equal to 90 percent of the taxable or net income of the taxpayer, nor shall a taxpayer be allowed a deduction under section 170 of the Internal Revenue Code of 1954 for payment of the amount of the refund to an organization described in section 170 (c). Similarly, a right to a refund shall not be included in the gross estate of a decedent nor shall the refund be permitted as a deduction from the decedent's gross estate when paid over to a person or organization described in section 2055 of the Internal Revenue Code of 1954. Moreover, the amount equal to the amount of the refund which will be transferred under the terms of the decedent's will, thereby permitting the refund to be made to the decedent's estate, shall not be taken into account in determining the liability of the estate for Federal estate tax. This subparagraph shall not, however, apply in determining whether for purposes of section 2 (b) (2) of Public Law 408 an amount paid to a person or organization described in section 2055 of the Internal Revenue Code of 1954 would be deductible under that section.

(7) If a claim for refund relates to an overpayment arising because of the first section of Public Law 408, in lieu of the 3-year period of limitation prescribed in section 322 (b) (1) of the Internal Revenue Code of 1939 the period of limitation shall be seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made. In the case of a claim described in this subparagraph, the amount of the refund may exceed the portion of the tax paid within the period prescribed in paragraph (2) or (3), whichever is applicable, of section 322 (b) of such Code, to the extent of the amount of the overpayment attributable to the enactment of the first section of Public Law 408.

PAR. 4. The amendments to §§ 39.120 and 39.120-1 of Regulations 118, covering taxable years beginning after December 31, 1951, set forth in this Treasury decision, are hereby made applicable to taxable years beginning after December 31, 1938, and before January 1, 1952 (such years being covered by Regulations 103 and 111).

[F. R. Doc. 58-8351; Filed, Oct. 8, 1958; 8:50 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 945]

TOMATOES GROWN IN FLORIDA

NOTICE OF PROPOSED EXPENSES AND RATE OF ASSESSMENT

Notice is hereby given that the Secretary is considering a proposed rule to establish a budget of expenses of the Florida Tomato Committee of \$126,000 and to fix the rate of assessment of one and one-half cents (\$0.015) per 60-pound crate of tomatoes, or respective equivalent quantities thereof, for the fiscal period beginning August 1, 1958. The proposed rule, which is based on recommendations of the Florida Tomato Committee and other available information, to the Secretary, would be established in accordance with the applicable provisions of Marketing Agreement No. 125 and Order No. 45 (7 CFR Part 945), regulating the handling of tomatoes grown in Florida. The said marketing agreement and order is effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

Consideration will be given to any data, views, or arguments pertaining thereto, which are filed in triplicate with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., not later than 10 days following publication of this notice in the FEDERAL REGISTER. The proposed rule is as follows:

§ 945.204 *Expenses and rate of assessment.* (a) The reasonable expenses that are likely to be incurred by the Florida Tomato Committee, established pursuant to Marketing Agreement No. 125 and this part, to enable such committee to

perform its functions pursuant to provisions of the aforesaid marketing agreement and order, during the fiscal period beginning August 1, 1958, will amount to \$126,000.

(b) The rate of assessment to be paid by each handler, pursuant to Marketing Agreement No. 125 and this part, shall be one and one-half cents (\$0.015) per 60-pound crate of tomatoes, or respective equivalent quantities thereof, handled by him as the first handler thereof during said fiscal period.

(c) The terms used in this section shall have the same meaning as when used in Marketing Agreement No. 125 and this part.

(Sec. 5, 49 Stat. 753, as amended 7 U. S. C. 608c)

Dated: October 6, 1958.

[SEAL]

S. R. SMITH,
Director,

Fruit and Vegetable Division.

[F. R. Doc. 58-8358; Filed, Oct. 8, 1958; 8:50 a. m.]

NOTICES

ATOMIC ENERGY COMMISSION

[Docket No. 50-103]

AEROJET GENERAL NUCLEONICS

NOTICE OF PROPOSED ISSUANCE OF UTILIZATION FACILITY LICENSE

Please take notice that the Atomic Energy Commission proposes to issue a facility license to Aerojet-General Nucleonics substantially as set forth below unless within fifteen days after the filing of this notice with the Federal Register Division a request for a formal hearing is filed with the Commission as provided by the Commission's rules of practice (10 CFR Part 2). The proposed license would authorize Aerojet-General Nucleonics to operate its reactor Model AGN-211, Serial No. 102, at San Ramon, California, at power levels not in excess of fifteen watts (thermal) and to transfer possession of, and title to, the reactor to any person licensed to receive it.

The notice of proposed issuance of the construction permit for this reactor published in the FEDERAL REGISTER on July 22, 1958, 23 F. R. 5551, stated that a Class 104 license authorizing operation of the reactor at a level of fifteen watts will not be issued by the Commission until the applicant furnishes the Commission with a report setting forth the measured radiation dose rates, during operation of reactor Model AGN-211, Serial No. 101 at fifteen watts, at the surface of the pool, on the bridge, at the outer surface of the shield, at the console, and at any area where persons may be expected to be located during operation of the reactor. The applicant, by letter dated August 20, 1958, has provided a report of measured radiation dose rates during operation of reactor Model AGN-211, Serial No. 101 at fifteen watts. The Commission has reviewed and evaluated this report and concluded that there is reasonable assurance that the reactor may be operated at a maximum power of fifteen watts without undue risk to the health and safety of the public and operating personnel.

For further details see (1) the application submitted by Aerojet-General Nucleonics, and amendments thereto, and (2) a memorandum by the Division of Licensing and Regulation which summarizes the principal factors considered in reviewing the application for license, both on file at the Commission's Public

Document Room, 1717 H Street NW., Washington, D. C. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D. C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 3d day of October 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director,

Division of Licensing and Regulation.

PROPOSED LICENSE

1. This license applies to the nuclear reactor designated by the applicant, Aerojet-General Nucleonics, San Ramon, California, as Model AGN-211, Serial No. 102 (hereinafter referred to as "the reactor") which is owned by the applicant and located at San Ramon, California, and described in the application dated April 7, 1958, and amendments thereto dated May 23, 1958, and August 20, 1958 (hereinafter referred to as "the application").

2. Pursuant to the Atomic Energy Act of 1954 (hereinafter referred to as "the act") and having considered the record in this matter, the Atomic Energy Commission (hereinafter referred to as "the Commission") finds that:

A. The utilization facility authorized for construction by Construction Permit No. CRR-27, dated August 6, 1958, and issued to Aerojet-General Nucleonics has been constructed and will operate in conformity with the application and in conformity with the act and the rules and regulations of the Commission.

B. There is reasonable assurance that the reactor can be operated without endangering the health and safety of the public.

C. Aerojet-General Nucleonics is technically and financially qualified to operate the reactor.

D. Issuance of a license to possess and operate the facility will not be inimical to the common defense and security or to the health and safety of the public.

E. Aerojet-General Nucleonics has submitted proof of financial protection which satisfies the requirements of Commission regulations currently in effect.

3. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses Aerojet-General Nucleonics:

A. Pursuant to section 104c of the act and Title 10, CFR, Chapter I, Part 50, "Licensing of Production and Utilization Facilities", to possess and operate the reactor as a utilization facility in accordance with the procedures described in its application and

to transfer possession of, and title to, the reactor to any person licensed to receive it.

B. Pursuant to the act and Title 10, CFR, Chapter I, Part 70, "Special Nuclear Material", to possess and use up to 1000 grams of contained uranium 235 in uranium oxide (UO_2) in connection with operation of the reactor.

C. Pursuant to the act and Title 10, CFR, Chapter I, Part 30, "Licensing of Byproduct Material", to possess, but not to separate from the fuel or target material such byproduct material as may be produced from operation of the reactor.

4. This license shall be deemed to contain and be subject to the conditions specified in § 50.54 of Part 50 and § 70.32 of Part 70; is subject to all applicable provisions of the act and rules, regulations and orders of the Commission now or hereafter in effect, and is subject to the additional conditions specified below:

A. Aerojet-General Nucleonics shall not operate the reactor at power levels in excess of fifteen watts (thermal) without previous authorization from the Commission.

B. A maximum of 0.2 percent excess reactivity may be loaded in the reactor with the experimental facilities empty and a maximum of 0.4 percent excess reactivity may be loaded in the reactor with moderator or fuel in the experimental facilities.

C. In addition to those otherwise required under this license and applicable regulations, Aerojet-General Nucleonics shall keep the following records:

1. Reactor operating records, including power levels.
2. Records of in-pile irradiations.
3. Records showing radioactivity released or discharged into the air or water beyond the effective control of Aerojet-General Nucleonics as measured at the points of such release or discharge.
4. Records of emergency reactor scrams, including reasons for emergency shutdowns.

D. Aerojet-General Nucleonics shall immediately report to the Commission in writing any indication or occurrence of a possible unsafe condition relating to the operation of the reactor.

This license is effective as of the date of issuance and shall expire at midnight August 6, 1978 unless sooner terminated.

For the Atomic Energy Commission.

Date of issuance:

[F. R. Doc. 58-8327; Filed, Oct. 8, 1958; 8:45 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The Department of the Air Force has filed an application, Serial Number A.044485 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. The applicant desires the land for a Tacan installation.

For a period of 60 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, Anchorage Operations Office, Mailing Address: 131 Fifth Avenue, Location: 744 Fourth Avenue, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

HOMER AREA

T. 6 S., R. 14 W., S. M.,
Sec. 2: $S\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$
 $SE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$
 $SE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$
 $SE\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$.

Containing approximately 42.5 acres.

ARCHIE D. CRAFT,

Acting Operations Supervisor,
Anchorage.

[F. R. Doc. 58-8329; Filed, Oct. 8, 1958; 8:45 a. m.]

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The Department of the Air Force has filed an application, Serial Number 014030 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. The applicant desires the land for a Communications Site.

For a period of sixty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P. O. Box 1050, Fairbanks, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

UNALAKLEET AREA

Commencing at USC&GS Station, "Gibson"; thence southeast 2.5 miles, more or less, to a point; thence West 250 feet to the point of beginning; thence North 300 feet; thence East 600 feet; thence South 600 feet; thence West 600 feet; thence North 300 feet to point of beginning, being 8.262 acres, more or less.

RICHARD L. QUINTUS,
Operations Supervisor,
Fairbanks.

[F. R. Doc. 58-8330; Filed, Oct. 8, 1958; 8:46 a. m.]

[Document No. 187]

ARIZONA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The U. S. Forest Service has filed an application, Serial No. AR-018950, for the withdrawal of lands as described below, from location and entry under the

General Mining Laws, subject to existing valid claims.

The applicant desires the land for an administrative site.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P. O. Box 148, Phoenix, Arizona.

If circumstances warrant it, a public hearing will be held at a convenient time and place which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER.

A separate notice will be sent to each interested party of record.

The lands involved in the application are:

GILA AND SALT RIVER MERIDIAN, ARIZONA

SITGREAVES NATIONAL FOREST

Juniper Ridge Lookout Administrative Site

T. 10 N., R. 20 E.,
Sec. 14: $E\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$
Total Area: 20 Acres

Dated: October 3, 1958.

E. I. ROWLAND,

State Supervisor.

[F. R. Doc. 58-8331; Filed, Oct. 8, 1958; 8:46 a. m.]

[Document No. 188]

ARIZONA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The National Park Service has filed an application, Serial No. AR-018981, for the withdrawal of the lands as described below from all forms of appropriation including the mining and mineral leasing laws.

The applicant desires the land for National Monument purposes in connection with the proposed Fort Bowie National Monument.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P. O. Box 148, Phoenix, Arizona.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 15 S., R. 28 E.,
Sec. 12: $S\frac{1}{2}SE\frac{1}{4}$, $N\frac{1}{2}N\frac{1}{2}$, $SW\frac{1}{4}$ - 400 acres
Sec. 13: $N\frac{1}{2}$ - 320 acres
Total area - 720 acres

Dated: October 3, 1958.

E. I. ROWLAND,

State Supervisor.

[F. R. Doc. 58-8332; Filed, Oct. 8, 1958; 8:46 a. m.]

Bureau of Reclamation

[Montana 027972]

MISSOURI RIVER BASIN PROJECT, MONTANA

FIRST FORM RECLAMATION WITHDRAWAL

JULY 10, 1957.

Pursuant to the authority delegated by Departmental Order No. 2765 of July 30, 1954 (19 F. R. 5004), I hereby withdraw the following described lands from public entry under first form of withdrawal, as provided by section 3 of the act of June 17, 1902 (32 Stat. 388):

PRINCIPAL MERIDIAN, MONTANA

T. 30 N., R. 2 E.,
Sec. 26, S. 1/2 NE 1/4.
T. 30 N., R. 4 E.,
Sec. 2, SW 1/4 SE 1/4.

The above areas aggregate 120 acres.

E. G. NIELSEN,
Acting Commissioner.

[Montana 027972]

OCTOBER 3, 1958.

I concur. The records of the Bureau of Land Management will be noted accordingly.

The lands shall be administered by the Bureau of Land Management until such time as they are needed for reclamation purposes.

EDWARD WOOLEY,
Director,

Bureau of Land Management.

[F. R. Doc. 58-8334; Filed, Oct. 8, 1958;
8:46 a. m.]

Office of the Secretary

[Order No. 2835]

HEADS OF BUREAUS

DELEGATION OF AUTHORITY RESPECTING
LAND MANAGEMENT PROGRAMS

OCTOBER 2, 1958.

SECTION 1. *Delegation.* The head of each bureau is authorized to exercise the authority of the Secretary of the Interior.

(a) Pursuant to the Halogeton Glomeration Control Act (66 Stat. 597, 7 U. S. C. 1651).

(b) Pursuant to section 6 of Reorganization Plan No. IV of 1940 (5 U. S. C. 133t, note) with respect to soil and moisture conservation operations conducted on lands under the jurisdiction of the bureau.

Sec. 2. *Redelegation.* The head of each bureau may, in writing, redelegate or authorize written redelegation of the authority granted in section 1 of this order.

Sec. 3. *Revocation.* Order No. 2736 is revoked.

(Sec. 2, Reorg. Plan No. 3 of 1950; 5 U. S. C. 133z-15 note)

ELMER F. BENNETT,
Acting Secretary of the Interior.

[F. R. Doc. 58-8334; Filed, Oct. 8, 1958;
8:46 a. m.]

CERTAIN WATERS ADJACENT TO UPPER
MISSISSIPPI RIVER WILD LIFE AND FISH
REFUGE, IOWA, MINNESOTA AND WIS-
CONSIN

DESIGNATION AS CLOSED AREAS

By virtue of and pursuant to the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755), as amended by the act of June 20, 1936 (49 Stat. 1555), and by virtue of the Reorganization Plan II (53 Stat. 1431), and in accordance with the provisions of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238), I, Fred A. Seaton, Secretary of the Interior, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of migratory birds included in the terms of the Convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916, and the Convention between the United States and the United Mexican States for the protection of migratory birds and game mammals, concluded February 7, 1936, do hereby designate as closed areas in or on which pursuing, hunting, taking, capturing, or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted, all lands and waters below the highwater mark of the Mississippi River, lying within the exterior boundaries of areas designated as closed to hunting by the Director, Bureau of Sport Fisheries and Wildlife, United States Fish and Wildlife Service, Department of the Interior, on March 25, 1957 (50 CFR 33.275; 22 F. R. 2129), and more particularly described as follows:

Pool 4—Petersons Lake—Reicks Lake Closed Area

All navigable channels of the Mississippi River in Pool 4 of the Navigation Channel Project lying within the Petersons Lake—Reicks Lake Closed Area and between the following-described lines marking the upstream and downstream limits of said closed area:

(Upstream Limits.) Beginning at Project Boundary Pin #19A located in lot 1 of sec. 1, T. 10 N., R. 10 W., Wabasha County, Minnesota; thence northeasterly, on an approximate bearing of N. 5° E., crossing the Mississippi River, approximately 3,900 feet to the northwesterly or upstream tip of Island No. 32; thence continuing northeasterly, on an approximate bearing of N. 5° E., approximately 650 feet to a point in the southerly boundary of lot 3 of sec. 21, T. 22 N., R. 13 W., approximately 800 feet easterly of the southwest corner thereof; thence southeasterly, northeasterly, and northwesterly, with the southerly and easterly boundaries of said lot 3 approximately 2,460 feet to the northeast corner of said lot 3 on the westerly bank of Beef Slough; thence easterly across Beef Slough, approximately 600 feet to the northwest corner of lot 8, sec. 21, T. 22 N., R. 13 W., Buffalo County, Wisconsin.

(Downstream Limits.) Beginning at the northwest corner of U. S. Corps of Engineers tract B-1A, in the westerly boundary of lot 2, of sec. 2, T. 21 N., R. 13 W., Buffalo County, Wisconsin, approximately 490 feet northwesterly of the southwest corner thereof and approximately 1,025 feet normally distant from the axis of Lock and Dam No. 4; southwesterly, across the Mississippi River, with a

line parallel to the axis of Lock and Dam No. 4, on an approximate bearing of S. 67° 11' W., to a point in the east boundary of lot 2 of sec. 17, T. 110 N., R. 9 W., on the right or westerly bank of the Mississippi River approximately 35 feet downstream from the line common to secs. 17 and 18; thence southeasterly with the right bank of the Mississippi River, and with the easterly boundaries of lot 2 of sec. 17 and lot 5 of sec. 20, approximately 1,885 feet to an intersection with the southerly construction limits of the earth dike of Lock and Dam No. 4, being 525 feet normally distant from the line between secs. 17 and 20; thence in T. 110 N., R. 9 W., Wabasha County, Minnesota, westerly on an approximate bearing of S. 89° 42' W., approximately 5,290 feet to a point at the southwesterly corner of said construction limits and in the U. S. Corps of Engineers boundary in lot 1 of sec. 19.

Pool 5—Lost Island—Whitman Closed Areas

All navigable channels of the Mississippi River in Pool 5 of the Navigation Channel Project lying within and between the Lost Island and Whitman Closed Areas and between the following-described lines marking the upstream and downstream limits of said areas:

(Upstream Limits.) Beginning at the intersection of the north bank of the mouth of Fishers Gut in the east boundary of lot 9 of sec. 16, T. 109 N., R. 9 W., Wabasha County, Minnesota, about 300 feet northerly of the line between secs. 16 and 21; thence southeasterly, on a straight line, approximately 400 feet to the downstream tip of Fisher Island, about 700 feet downstream from a lighted navigation marker on the right bank of the channel; thence northeasterly, on a straight line, approximately 2,000 feet to the northerly point of lot 12 of sec. 1, T. 20 N., R. 13 W., Buffalo County, Wisconsin, on the right bank at the head of Buffalo City Slough and about 3,000 feet downstream from a lighted navigation marker on the left bank of the channel.

(Downstream Limits.) Beginning at the right bank of the mouth of the Whitewater River near the line between lots 3 and 4 of sec. 34, T. 109 N., R. 9 W., Wabasha County, Minnesota, thence N. 62° 00' E., 1,000 feet, more or less, to a point on the left bank of the main channel of the Mississippi River in the west boundary of lot 1, sec. 24, T. 20 N., R. 13 W., Buffalo County, Wisconsin.

Pool 5A—Winona Pool Closed Area

All navigable channels of the Mississippi River within Pool 5A of the Navigation Channel Project lying within the Winona Pool Closed Area and between the following-described lines marking the upstream and downstream limits of said closed area:

(Upstream Limits.) Beginning at the point where the west line of lot 5 of sec. 16, T. 19 N., R. 11 W., Buffalo County, Wisconsin, intersects the westerly right-of-way boundary of the Chicago, Burlington & Quincy Railroad; thence west across Betsy Slough to the east bank of Island No. 63, in the easterly boundary of lot 6, sec. 16; thence northwesterly with the boundary of lot 6 to the upper end of Island No. 63; about 250 feet northwesterly of a lighted navigation marker on the right bank of the channel; thence southerly with the west boundaries of lot 6 of sec. 16 and lots 2 and 1 of sec. 21 to an intersection with the easterly extension of the line common to Tps. 107 and 108 N., R. 7 W.; thence westerly with said extended line, to the meander corner common to sec. 31, T. 108 N., R. 7 W., and sec. 6, T. 107 N., R. 7 W., Winona County, Minnesota.

(Downstream Limits.) Beginning at the meander corner between secs. 8 and 9, T. 107 N., R. 7 W., Winona County, Minnesota, on the northeasterly bank of Straight

Slough; thence northerly with the line between secs. 8 and 9, approximately 400 feet to a corner in the southeasterly construction-limits boundary of Lock and Dam No. 5A; thence with said construction-limits boundary in fractional sec. 9, N. 50°09' E., 2,413.4 feet to a corner in the line between lots 4 and 5 of sec. 9; easterly with the line between lots 4 and 5 approximately 280 feet to an intersection with the westerly or right bank of the Mississippi River; northeasterly with a line parallel to the axis of the earth dike of Lock and Dam No. 5A and approximately 800 feet normally distant and southeasterly thereof, approximately 1,000 feet to an intersection with the northeasterly bank of Island No. 68; thence northerly with the northeasterly bank of Island No. 68 to an intersection with the line common to lots 3 and 2 of said fractional sec. 9; thence northeasterly, approximately 400 feet to the southeasterly or downstream tip of Island No. 65; thence northwesterly with the northeasterly bank of Island No. 65 to an intersection with the line between secs. 4 and 5 of T. 107 N., R. 7 W., extended northerly; thence on an approximate bearing of N. 15° E., 700 feet, more or less, to the point where the line between secs. 22 and 27 of T. 19 N., R. 11 W., Buffalo County, Wisconsin, intersects the westerly right-of-way boundary of the Chicago, Burlington & Quincy Railroad.

Pool 8—Wisconsin Island Closed Area

All navigable channels of the Mississippi River in Pool 8 of the Navigation Channel Project lying within the Wisconsin Island Closed Area and between the following-described lines marking the upstream and downstream limits of said closed area:

(Upstream Limits.) Beginning at the northernmost point of Island No. 120, being the northerly point of lot 5 of sec. 19, T. 14 N., R. 7 W., Vernon County, Wisconsin, about 250 feet northwesterly of the navigation channel marker; thence northwesterly across Raft Channel approximately 600 feet to the northeasterly point of a small island; thence southwesterly, with the westerly bank of said island, approximately 1,450 feet to an intersection with the line between T. 102 N., R. 4 W., and T. 103 N., R. 4 W., Houston County, Minnesota, extended easterly; thence westerly with said line extended and with said township line to the point where the line common to sec. 35, T. 103 N., R. 4 W., and sec. 2, T. 102 N., R. 4 W., Houston County, Minnesota, intersects the easterly right-of-way boundary of the Chicago, Milwaukee, St. Paul & Pacific Railroad.

(Downstream Limits.) Beginning at the intersection of the southwesterly construction-limits of the earth dike of Lock and Dam No. 8, with the south boundary of lot 1, sec. 6, T. 101 N., R. 3 W., Houston County, Minnesota; thence easterly with said south boundary of lot 1 to the west or right bank of the Mississippi River; thence northeasterly across Raft Channel of the Mississippi River approximately 1,000 feet to the downstream point of the island at the intersection of the easterly or left bank of Raft Channel with the westerly or right bank of the present channel of the Mississippi River (Coon Slough), in sec. 20, T. 13 N., R. 7 W., Vernon County, Wisconsin.

Pool 9—Harpers Slough Closed Area

All navigable channels of the Mississippi River in Pool 9 of the Navigation Channel Project lying within the Harpers Slough Closed Area and between the following-described lines marking the upstream and downstream limits of said closed area:

(Upstream Limits.) Beginning at the northernmost tip of lot 1, sec. 21, T. 98 N., R. 2 W., Allamakee County, Iowa; thence southerly with the westerly boundaries of lots 1 and 2 of sec. 21, to the south boundary

of said sec. 21, T. 98 N., R. 2 W.; thence westerly across Harpers Slough, to the intersection of the line between secs. 20 and 29, T. 98 N., R. 2 W., Allamakee County, Iowa; with the easterly right-of-way boundary of the Chicago, Milwaukee, St. Paul & Pacific Railroad.

(Downstream Limits.) Beginning at corner No. 6 in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 7, T. 97 N., R. 2 W., Allamakee County, Iowa, being the intersection of the southwesterly construction-limit boundary of the earth dike of Lock and Dam No. 9 with the easterly right-of-way boundary of the Chicago, Milwaukee, St. Paul & Pacific Railroad; thence with the southwesterly construction limits of the earth dike of Lock and Dam No. 9, across secs. 7, 18, and 17, T. 97 N., R. 2 W.; S. 22°05' E., 2,761.8 feet to corner 3, in the south boundary of lot 6 of sec. 7; easterly with the south boundary of said lot 6, approximately 300 feet to the southeast corner thereof; southeasterly with a line parallel to the centerline of the earth dike approximately 625 feet to the westerly boundary of lot 1 of sec. 18; southwesterly, with the westerly boundary of said lot 1, approximately 220 feet to an intersection with a line 400 feet normally distant southwesterly from the centerline of said dike; thence southeasterly with a line 400 feet normally distant southwesterly and parallel with said dike to the right or westerly bank of the Mississippi River, in the east boundary of said sec. 17.

Pools 10 and 11—12-Mile Island Closed Area

The navigation channel of Swift Slough from its head about one mile upstream from Lock and Dam No. 10 and extending downstream to its mouth about three-fourths mile below Lock and Dam No. 10.

In accordance with section 4 of the Administrative Procedure Act (5 U. S. C. 1003), notice of intention to adopt this regulation, dated July 28, 1958, was published August 1, 1958, in the FEDERAL REGISTER (23 F. R. 5842) and no protests or suggested changes having been received, this regulation is effective immediately upon publication in the FEDERAL REGISTER.

Issued at Washington, D. C., this 2d day of October 1958.

FRED A. SEATON,
Secretary of the Interior.

[F. R. Doc. 58-8335; Filed, Oct. 8, 1958; 8:47 a. m.]

Southwestern Power Administration CERTAIN EMPLOYEES

DELEGATION OF AUTHORITY RESPECTING OPEN MARKET FIELD PURCHASES

SECTION 1. *Authorization.* Pursuant to the authority delegated by the Secretary of the Interior in Order No. 2509, as amended (17 F. R. 6793; 19 F. R. 433), the Line Maintenance Foremen, Substation Maintenance Foremen, Depot Clerks, Labor Foremen (Equipment Operators), Chief Dispatcher, and Engineer (Road and Right-of-Way Maintenance) are authorized to take the following actions: Purchase supplies, equipment, and services (other than personal) through utilization of "U. S. Government Purchase Order — Invoice — Voucher" (SF-44) and blanket purchase arrangements in amounts not to exceed five hundred dollars (\$500).

SEC. 2. *Effective date.* This delegation shall be effective on and after date of publication in the FEDERAL REGISTER.

JAMES V. ALFRIEND,
Acting Administrator.

[F. R. Doc. 58-8336; Filed, Oct. 8, 1958; 8:47 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12210; FCC 58M-1097]

KENNETH G. AND MISHA S. PRATHER

ORDER SCHEDULING HEARING

In re application of Kenneth G. Prather and Misha S. Prather, Boulder, Colorado, Docket No. 12210, File No. BP-11289; for construction permit.

It is ordered, This 3d day of October 1958, that the hearing in the above-entitled matter heretofore postponed indefinitely is hereby scheduled to commence at 10:00 a. m., November 5, 1958, in the offices of the Commission in Washington, D. C.

Released: October 6, 1958.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-8353; Filed, Oct. 8, 1958; 8:50 a. m.]

[Docket Nos. 12481, 12482; FCC 58M-1002]

FARMINGTON BROADCASTING CO. AND FOUR
CORNERS BROADCASTING CO.

ORDER SCHEDULING HEARING

In re applications of Farmington Broadcasting Company, Farmington, New Mexico, Docket No. 12481, File No. BPCT-2369; Four Corners Broadcasting Company, Farmington, New Mexico, Docket No. 12482, File No. BPCT-2417; for construction permits for new television broadcast stations.

Pursuant to agreement of counsel arrived at during the prehearing conference held on this date: It is ordered, This 2d day of October 1958, that the hearing in the above-styled proceeding will commence at 10 o'clock a. m., on January 12, 1959, in Washington, D. C.

Released: October 3, 1958.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-8354; Filed, Oct. 8, 1958; 8:50 a. m.]

[Docket No. 12530; FCC 58M-1008]

MUSICAL HEIGHTS, INC.

ORDER CONTINUING HEARING

In re application of Musical Heights, Inc., Braddock Heights, Maryland, Docket No. 12530, File No. BP-10918; for construction permit.

It is ordered, This 3d day of October 1958 that, pursuant to agreement of counsel arrived at during the prehearing conference held on this date, the hearing in the above-entitled proceeding is continued from October 14, 1958, to December 4, 1958, at 10 o'clock a. m., in Washington, D. C.

Released: October 6, 1958.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-8355; Filed, Oct. 8, 1958;
8:50 a. m.]

[Docket Nos. 12542, 12543; FCC 58M-1096]

HENDERSON COUNTY BROADCASTING CO.
(KBUD) AND UNIVERSITY ADVERTISING
CO.

ORDER CONTINUING HEARING

In re applications of J. B. McNutt, Jr.,
tr/as The Henderson County Broad-
casting Company (KBUD), Athens,
Texas, Docket No. 12542, File No. BP-
11301; University Advertising Company,
Highland Park, Texas, Docket No. 12543,
File No. BP-11850; for construction per-
mits.

By agreement of the parties: It is or-
dered, This 3d day of October 1958, that
the hearing in the above-entitled pro-
ceeding presently scheduled to begin on
October 20, 1958, is hereby continued to
a date to be set by subsequent order.

Released: October 6, 1958.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-8356; Filed, Oct. 8, 1958;
8:50 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-14434, etc.]

HUDSON OIL & METALS CO. ET AL.

NOTICE OF APPLICATIONS AND DATE
OF HEARING

OCTOBER 3, 1958.

In the matters of Hudson Oil & Metals
Company, Operator, et al., Docket No.
G-14434; Reaser Oil & Gas Company,
Docket No. G-14784; Phillips Gas Com-
pany, Docket No. G-14873; Gunsite
Butte Uranium Corporation, Docket No.
G-14924; MacDonald Oil Corporation,
Operator, et al., Docket No. G-14976;
Superior Oil Company, Docket No. G-
6163; MacDonald Oil Corporation, Op-
erator, et al., Docket No. G-14977;
Martin, Williams & Judson, Operator,
et al., Docket No. G-14985; M. W. J.
Producing Company, Operator, et al.,
Docket No. G-15116; The Deb Oil and
Gas Company, Docket No. G-15144;
Hudson Oil & Metals Company, Docket
No. G-15154; Sharples Oil Corporation,
Docket No. G-6080; Benson-Montin-
Greer Drilling Corporation, Operator,
et al., Docket No. G-15167; Phillips Pe-
troleum Company, Docket No. G-15216,
G-15253; M. P. S. Production Company,

Agent for L. Pulaski, et al., Docket No.
G-15283; Texas Pacific Coal and Oil
Company, Docket No. G-15296; Texas
Gulf Sulphur Company, Docket No. G-
15299; Horizon Oil and Gas Company, a
partnership of N. Bruce Calder and
Curtis E. Calder, Docket No. G-15307;
Humble Oil and Refining Company, Doc-
ket No. G-12175.

Take notice that each of the above
designated parties (with the exception
of Superior Oil Company (Superior))
Docket No. G-6163, Sharples Oil Cor-
poration (Sharples), Docket No. G-6080,
and Humble Oil and Refining Company
(Humble), Docket No. G-12175) has filed
an application for a certificate of public
convenience and necessity, pursuant to
section 7 of the Natural Gas Act, au-
thorizing the sale in interstate commerce
of natural gas for resale as hereinafter
described, subject to the jurisdiction of
the Commission, all as more fully rep-
resented in the respective applications
which are on file with the Commission,
and open to public inspection.

Humble has filed applications to amend
the order issuing a certificate in Docket
No. G-12175; and Superior and Sharples
should take notice that certain certi-
ficate authorization granted to them is
subject to rescission all as hereinafter
described more specifically.

The parties filing applications for
certificates of public convenience and
necessity, hereinafter referred to as
Applicants, produce and propose to sell
natural gas in interstate commerce for
resale as indicated below:

Docket No. G-14434—Hudson Oil &
Metals Company, Operator, et al., (Ap-
plicant) filed its application on Febru-
ary 7, 1958, seeking authorization to sell
gas produced from the Block 39 Field,
Upton County, Texas, to El Paso Natural
Gas Company. Applicant is filing for
itself and on behalf of the nonoperating
owners of working interests in the W. H.
Skaggs Leases as follows: Hudson,
Operator, 25 percent; Samuel B. Ballen
(Agent), 9.375 percent; Clardy & Barnett,
3.125 percent; Burt Kleiner (Agent), 50
percent; R. P. Coats, 6.25 percent and
E. A. Jenkins, 6.25 percent. Production
from subject acreage is proposed to be
sold pursuant to a basic gas sales con-
tract dated March 26, 1957, and two
amendatory agreements adding addi-
tional acreages thereto dated August 26
and September 16, 1957. Hudson is the
only signatory seller party to the basic
contract and amendatory agreements in-
volved herein, which have been tendered
for filing as Applicant's FPC Gas Rate
Schedule No. 3 and Supplements Nos. 1
and 2 thereto. Letter dated May 21,
1958, filed May 26, 1958, states that ser-
vice commenced under the subject basic
contract (Skaggs et al., No. 1 Well) on
June 16, 1957.

Docket No. G-14784—Reaser Oil & Gas
Company, (Applicant) filed its applica-
tion on March 28, 1958, seeking authori-
zation to sell gas produced from the De
Kalb District (Tanner Area) Gilmer
County, West Virginia to the Equitable
Gas Company. W. H. Mossor, partner in
the Reaser Oil & Gas Company, signed
the application as agent for the above-
named company. W. H. Mossor is the

only signatory seller party to the gas
sales contract dated March 6, 1958,
which contract has been tendered for
filing as the W. H. Mossor FPC Gas Rate
Schedule No. 13.

Docket No. G-14873—Phillips Gas
Company, (Applicant) filed its applica-
tion on April 14, 1958, seeking authori-
zation to sell gas produced from the
Walton District (Gages Creek), Roane
County, West Virginia to South Penn
Natural Gas Company. Phillips Gas
Company is a partnership consisting of
the following co-owners: Thomas R.
Moffatt, D. O. Phillips, Earl Drake, Orbie
Drake, Otto Lee Abbot, Elmer Ledsome,
Ada Ledsome, Mrs. Ollie Doran, Mrs.
Faye E. Lynch, Mrs. Emma Phillips, Rob-
ert P. Heath, O. F. Canterbury, J. A.
Younger, E. L. Thompson, Earl E. Car-
penter, Roy Lee Statts, Charlie Phillips,
Harry D. Statts, Vaughn Boatright,
George E. R. Elmore, Blake Mammack,
L. R. Pritt, Richard W. Summers, B. J.
McCune, Wirt E. Kinnison, O. E. Thomp-
son, C. H. Moore and Bruce O. Hunt. All
above-named co-owners are signatory
seller parties to the gas sales contract
dated October 14, 1957, which contract
has been tendered for filing as Thomas
R. Moffatt et al., D/B/A Phillips Gas
Company FPC Gas rate Schedule No. 1.

Docket No. G-14924—Gunsite Butte
Uranium Corporation (Applicant) filed
its application on April 21, 1958, seeking
authorization to sell gas produced from
the Tapacito Pool, Rio Arriba County,
New Mexico to El Paso Natural Gas Com-
pany. The gas sales contract involved
herein limits production to horizons
down to and including the Pictured
Cliffs Formation. The contract is on
file as Applicant's FPC Gas Rate Sched-
ule No. 1.

Docket No. G-14976—MacDonald Oil
Corporation, Operator, et al. (Appli-
cant), filed its application on April 25,
1955, seeking authorization to sell gas
produced from the D. L. Hutt Lease in
the Spraberry Trend Field, Midland
County, Texas, to El Paso Natural Gas
Company. Applicant is filing for itself
and on behalf of the non-operating own-
ers of the working interest in the D. L.
Hutt Lease. Applicant and the non-
operating interest owners are selling the
gas pursuant to a contract between
Superior Oil Company and El Paso, in
which they are successors in interest to
Superior by way of diverse assignments.
The contract and assignments are on file
as MacDonald Oil Corporation (Opera-
tor), et al., FPC Gas Rate Schedule No.
2 and Supplements Nos. 1 through 4
thereto.

Docket No. G-6163—Superior Oil Com-
pany is hereby notified that so much of
the certificate authorization granted by
order issued April 18, 1956, in this docket
as authorized the sale of gas produced
from the acreage assigned to Barron
Hilton and Robert Mead by instrument
dated August 22, 1955, as set forth in the
application in Docket No. G-14976, is
subject to rescission, and will be re-
scinded unless Superior presents evi-
dence showing such authorization should
remain in effect.

Docket No. G-14977—MacDonald Oil
Corporation, Operator, et al. (Appli-
cant), filed its application on April 25,

1958, seeking authorization to sell gas produced from the S. E. Stout, et al., Lease in the Spraberry Trend Field, Reagan County, Texas, to El Paso Natural Gas Company. The gas is being sold pursuant to a contract between Curtis Oil Company and El Paso dated February 21, 1955. By virtue of various assignments Applicant has become successor in interest to Curtis Oil Company, to the extent of such assignments. The contract and assignments have been tendered for filing as Applicant's FPC Gas Rate Schedule No. 1 and Supplements Nos. 1 through 4 thereto.

Docket No. G-14985—Martin, Williams & Judson, Operator, et al. (Applicant) filed its application on April 25, 1958, seeking authorization to sell gas produced from the Spraberry Trend Area, Reagan County, Texas, to El Paso Natural Gas Co. Martin, Williams & Judson, a partnership consisting of William H. Martin, R. Ken Williams and Edward H. Judson is the Operator, and is filing for itself and on behalf of the following non-operating owners of working interests in the subject leases: Tri-Service Drilling Co., Martin & Williams, H. E. Lindsey, Jr., Hugh Meyer and John L. Schlagal. The individual members of the partnership and all remaining above-named co-owners are signatory seller parties to the gas sales contract dated February 4, 1957, which contract is on file as Applicant's FPC Gas Rate Schedule No. 1.

Docket No. G-15116—M. W. J. Producing Company, Operator, et al. (Applicant), filed its application on May 16, 1958, seeking authorization to sell gas produced from the Murrey, et al., Lindley "A" and "B", and Cravens leases in the Spraberry Trend Area, Reagan County, Texas, to El Paso Natural Gas Company. M. W. J. Producing Company, Operator, is filing for itself and on behalf of the following non-operators: Martin, Williams & Judson, Tri-Service Drilling Co., Martin & Williams, Hugh Meyer, Durward Goolsby, Harry S. Murray, Weldon L. Dawson and Charles C. Johnson who own combined working interests of 100, 50, and 59.4 percent in the Lindley "A", Lindley "B" and Craven Leases, respectively, and who all are signatory seller parties to the gas sales contract dated February 14, 1957, and amendatory agreements adding additional acreages thereto dated March 22, 1957, and December 10, 1957. Weldon L. Dawson and Charles C. Johnson ratified the subject contract and became signatory parties thereto through the amendatory agreement dated December 10, 1957. In addition, Operator is filing on behalf of the following non-signatory owners of working interests: Lindley "B" Lease—Phillips Petroleum Co., 21.875 percent; D. F. Garrett, 28.125 percent; Cravens Lease—D. F. Garrett, 40.6 percent. Subject basic gas sales contract limits production to horizons down to depth of 7,500 feet. The contract and amendments are on file as Applicant's FPC Gas Rate Schedule No. 1 and Supplements Nos. 1 and 2 thereto.

Docket No. G-15144—The Deb Oil and Gas Company (Applicant) a West Virginia corporation having its principal place of business at Weston, West Vir-

ginia filed its application on May 21, 1958, seeking authorization to sell gas produced from the C. O. Tywman, et ux., lease in the Center District (Rosedale Area) Gilmer County, West Virginia to Equitable Gas Company. The gas sale contract dated April 22, 1958, has been tendered for filing as Richard Bennett FPC Gas Rate Schedule No. 1.

Docket No. G-15154—Hudson Oil & Metals Company (Applicant) filed its application on May 26, 1958, seeking authorization to sell its interest in gas produced from the H. W. Steele, et al., Lease in the Spraberry Trend Area, Reagan County, Texas, to El Paso Natural Gas Company. Applicant states that it has sold (on and since May 19, 1956) natural gas from said lease to El Paso pursuant to a basic gas sales contract dated August 28, 1953, between The Sharples Oil Corporation, seller and El Paso, buyer. In assignment from Sharples dated January 13, 1956, Crow Oil Corporation acquired subject acreage; subsequently, in instrument dated March 19, 1956, Crow Oil Corporation, reassigned said acreage to Hudson; consequently, Applicant attained signatory seller status to the aforesaid gas sales contract to the extent of such assignment. Assignments limit production to horizons down to depth of 8,000 feet. Sharples received authorization in Docket No. G-6080 covering the sale of gas under the subject contract. Concurrently with application involved herein, Sharples filed the necessary copies of the subject assignments as supplements to its rate schedule filing, however, no filing has been made with regard to certificate issued in Docket No. G-6080. The contract and assignments are on file as Applicant's FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto.

Docket No. G-6080—Sharples Oil Corporation is hereby notified that so much of the certificate authorization granted by order issued December 6, 1956 in this docket as authorized the sale of gas produced from the acreage assigned to Crow Oil Corporation by farmout agreement dated January 13, 1956, as set forth in the application in Docket No. G-15154 is subject to rescission and will be rescinded unless Sharples presents evidence showing such authorization should remain in effect.

Docket No. G-15167—Benson-Montin-Greer Drilling Corp., Operator, et al. (Applicant) filed its application on May 27, 1958, seeking authorization to sell gas produced from the Blanco (Pictured Cliffs) Field, Rio Arriba County, New Mexico to El Paso Natural Gas Company. Benson-Montin-Greer Drilling Corporation, Operator, Anderson Construction Company, Inc., Brooks Hall, J. Burton Orand, F. M. Late, Oklahoma & Northwestern Company, Russell A. Bowen, Jack London, Jr., and Tocito Oil Corporation are filing jointly for their individual working interests in three productive areas. All are signatory seller parties to the basic gas sales contract dated January 12, 1956 (Oklahoma & Northwestern Company by ratification agreement dated November 19, 1956, Jack London, Jr., and Tocito Oil Corporation by ratification agreement dated

April 25, 1957 and Russell A. Bowen by assignment from Oklahoma & Northwestern Company). The above-mentioned ratification agreements have been signed by the purchaser, and the agreement dated November 19, 1956, adds additional acreage to the basic contract. The basic contract limits production to depths to base of Pictured Cliffs formation. The contract, ratification and amendment have been tendered for filing as Applicant's FPC Gas Rate Schedule No. 1 and Supplements Nos. 1 and 2 thereto.

Docket No. G-15216—Phillips Petroleum Company (Applicant) filed its application on June 2, 1958, seeking authorization to sell its 25 percent interest in gas produced from the Cabot Clawson Lease, Hansford County, Texas, to Panhandle Eastern Pipe Line Company. The sale contract, which limits the gas to be sold to that which will be produced from horizons down to a depth of 300 feet below the top of the Mississippian System, has been tendered for filing as Applicant's FPC Gas Rate Schedule No. 314.

Docket No. G-15253—Phillips Petroleum Company (Applicant) filed its application on June 9, 1958, seeking authorization to sell its 25 percent interest in all casinghead gas produced from the Lindley "B" Lease located in the Spraberry Trend Field, Reagan County, Texas, to El Paso Natural Gas Company. The gas sale contract dated May 9, 1958, has been tendered for filing as Applicant's FPC Gas Rate Schedule No. 315.

Docket No. G-15283—M. P. S. Production Company, Agent for L. Pulaski, et al. (Applicant) filed an application as agent for others on June 12, 1958, seeking authorization to sell gas produced from the W. O. Dreier Lease in the East Meyersville Field, DeWitt County, Texas to Texas Eastern Transmission Corporation. M. P. S. Production Company, Agent is filing on behalf of the following owners of working interests in the W. O. Dreier Lease: L. Pulaski, Jay Bahme, Bernard Z. Lee, D. A. Cammack, Morris Cooper, Ben Epstein, Dan Feinstein, Dave Kavinsky, Morris Kagan, Israel Rudy, Ivan Kaplan, Trustee, Dean Meyers, J. C. Petty, Jr., Ruth Pulaski, Charles Cohen, Robert Cohen, Bernard Sampson, Gerald Sud, Robert Sud, Arnold Sussman, G. W. Hunt and Claude Whelchel. All above-named co-owners are signatory seller parties to the gas sales contract dated March 24, 1958, which contract has been tendered for filing as L. Pulaski, et al., (by Agent, M. P. S. Production Company), FPC Gas Rate Schedule No. 1. It is noted that M. P. S. Production (L. Pulaski, President) owns no working interest in the subject acreage but has signed the contract as seller's representative. Gas will be delivered into the facilities of Wilcox Trend Gathering System for re-delivery to Texas Eastern at Provident City, Texas.

Docket No. G-15296—Texas Pacific Coal and Oil Company (Applicant) filed an application on June 16, 1958, seeking authorization to sell its 25 percent interest in gas produced from the Artec 30-11 Well No. 1-36 located in the Blanco Pictured Cliffs Field, San Juan County, New Mexico to Pacific Northwest Pipe-

line Corporation. Production is limited to the Pictured Cliffs Formation. The gas sale contract has been tendered for filing as Applicant's FPC Gas Rate Schedule No. 15.

Docket No. G-15299—Texas Gulf Sulphur Company (Applicant) filed its application on June 16, 1958, seeking authorization to sell gas produced from the Dora Hudgins and Lora Hudgins Leases in the Spanish Camp Area, Wharton County, Texas to Tennessee Gas Transmission Company. The gas sale contract dated May 15, 1958, has been tendered for filing as Applicant's FPC Gas Rate Schedule No. 1.

Docket No. G-15307—Horizon Oil and Gas Company filed its application on June 17, 1957, and filed a supplement thereto on June 27, 1957, seeking authorization to sell gas produced from the Horizon (Morrow) Field, Hansford County, Texas to Northern Natural Gas Company. Horizon Oil & Gas Company is a partnership composed of Curtis E. Calder, Jr., and N. Bruce Calder and is filing for its working interests in three productive wells acquired through assignments as follows:

Well designation	Assignor	Date of assignment	Depth limit
Phillips' Shedeck No. 1	Humble.....	2-13-58	8,200
Phillips' Chumma No. 1	Humble.....	2-24-58	8,400
Whitson No. 1-154	Roy Furr.....	11-4-58	8,027

Horizon operates the Whitson No. 1-154 Well. Applicant proposes to sell production from the three above-stated wells under a gas sales contract dated January 22, 1957, between Humble Oil & Refining Co., seller, and Northern, buyer. Humble received authorization in Docket No. G-12175 covering the sale of natural gas under said gas sales contract. Roy Furr acquired above-mentioned acreage through assignment to Howard Shipley from Humble dated October 17, 1957. Amendment filed June 27, 1958, is a request to include the Whitson No. 1-154 Well within the application. On July 3, 1958, Humble filed a request to delete from its certificate issued in Docket No. G-12175 acreages assigned to Applicant in instruments dated February 13 and 24, 1958 and on August 14, 1958. Humble filed a request to delete the acreage assigned to Shipley and reassigned thereafter to Applicant. The contract and assignments have been tendered for filing as Curtis E. Calder & Bruce N. Calder D/B/A Horizon Oil & Gas Company FPC Gas Rate Schedule No. 4 and Supplements Nos. 1 through 3 thereto.

Docket No. G-12175—Humble Oil and Refining Company filed on July 3, 1958, and August 14, 1958, its applications to amend the order issued in this docket on August 2, 1957, insofar as it authorized the sale by Humble of gas produced from the properties assigned to Horizon Oil and Gas Company by instruments dated February 13, and 24, 1958, and to Howard Shipley by instrument dated October 17, 1957, as more fully presented in the applications to amend in this

docket and set out at Docket No. G-15307 above.

These matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on November 12, 1958, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 5, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 58-8346; Filed, Oct. 8, 1958; 8:49 a. m.]

[Docket No. G-16112]

PHILLIPS PETROLEUM CO.

ORDER AMENDING ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE, AND ALLOWING INCREASED RATE TO BECOME EFFECTIVE

OCTOBER 3, 1958.

By order issued herein on August 29, 1958, the Commission, among other things, suspended and deferred the use until February 1, 1959, of Supplement No. 24 to Phillips Petroleum Company's (Operator) FPC Gas Rate Schedule No. 5. This supplement proposed an increased rate and charge for sales of natural gas to Panhandle Eastern Pipe Line Company at the Hansford and Sneed Gasoline Plants, Hansford and Moore Counties, Texas.

The Commission, upon further consideration, finds:

The said order issued August 29, 1958, should be amended as hereinafter provided.

The Commission orders:

(A) Paragraph (B) of the order issued herein on August 29, 1958, is amended to read as follows:

(B) Pending such hearing and decision thereon, said supplement be and

it is hereby suspended and the use thereof deferred until September 2, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) The order issued on August 29, 1958, is further amended to include the following paragraphs:

(E) The rate, charge, and classification set forth in the above-designated supplement to Phillips' FPC Gas Rate Schedule shall be effective as of September 2, 1958: *Provided, however,* That within 15 days from the date of this order, Phillips shall execute and file with the Secretary of the Commission the agreement and undertaking described in paragraph (G) below.

(F) Phillips shall refund at such times and in such amounts to the persons entitled thereto, and in such manner as may be required by final order of the Commission, the portion of the increased rates found by the Commission in this proceeding not justified, together with interest thereon at the rate of six percent per annum from the date of payment to Phillips until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates or charges allowed by this order to become effective, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report (original and four copies), in writing and under oath, to the Commission monthly, or quarterly if Phillips so elects, for each billing period, and for each purchaser, the billing determinants of natural gas sales to such purchasers and the revenues resulting therefrom, as computed under the rates in effect immediately prior to the date upon which the increased rates allowed by this order become effective, and under the rates allowed by this order to become effective, together with the differences in the revenues so computed.

(G) As a condition of this order, within 15 days from the date of issuance hereof, Phillips shall execute and file in triplicate with the Secretary of this Commission its written agreement and undertaking to comply with the terms of paragraph (F) hereof, signed by Phillips, or, if Phillips is a corporation, signed by a responsible officer thereof and evidenced by proper authority from the board of directors. As a further condition of this order, Phillips shall file with said agreement and undertaking a certificate showing service of copies thereof upon all purchasers under the rate schedule involved, as follows:

Agreement and Undertaking of Phillips Petroleum Company To Comply With the Terms and Conditions of Paragraph (F) of Federal Power Commission's Order Making Effective Proposed Rate Changes

In conformity with the requirements of the order issued (date) in Docket No. G-16112, Phillips Petroleum Company hereby agrees and undertakes to comply with the terms and conditions of paragraph (F) of said order, and has caused this agreement and undertaking to be executed and sealed in its name by its officers, thereupon duly authorized in accordance with the terms of

the resolution of its board of directors, a certified copy of which is appended hereto this ____ day of _____.

Attest:

(H) If Phillips shall, in conformity with the terms and conditions of paragraph (F) of this order, make the refunds as may be required by order of the Commission, the undertaking shall be discharged; otherwise, it shall remain in full force and effect.

By the Commission.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 58-8347; Filed, Oct. 8, 1958;
8:49 a. m.]

[Docket No. G-16470]

MAX PRAY ET AL.

ORDER FOR HEARING, SUSPENDING PROPOSED CHANGE IN RATE, AND ALLOWING INCREASED RATE TO BECOME EFFECTIVE

OCTOBER 3, 1958.

Max Pray (Operator) et al. (Pray) on September 5, 1958, tendered for filing a proposed change in his presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated August 30, 1958.

Purchaser: Southern Natural Gas Company.

Rate schedule designation: Supplement No. 2 to Pray's FPC Gas Rate Schedule No. 1.

Effective date: October 6, 1958 (effective date is the first day after expiration of the required thirty days' notice).

The increased rate and charge so proposed is intended to reflect (in whole or in part) the additional "excise, license, or privilege tax" of one cent per Mcf levied by the State of Louisiana pursuant to Act No. 8 of 1958 (House Bill No. 303), as approved on June 16, 1958, amending Title 47 of the Louisiana Revised Statutes of 1950. The Commission is advised that litigation is being instituted to challenge the constitutionality of the said Act No. 8 of 1958. In consideration of this fact, and in order to assure appropriate refund in the event said Act No. 8 of 1958 should be declared unconstitutional or otherwise held invalid by final decision, it is deemed advisable to suspend the said proposed increased rate and charge until October 7, 1958, and thereafter to permit it to become effective as of that date; provided, that within 20 days from the date of this order Pray shall file with the Secretary of the Commission an appropriate undertaking to assure such refund as may be ordered.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of

the said proposed change, and that Supplement No. 2 to Pray's FPC Gas Rate Schedule No. 1 be suspended and the use thereof deferred as hereinafter ordered.

(2) It is necessary and proper in the public interest in carrying out the provisions of the Natural Gas Act that Pray's proposed increased rate be made effective as hereinafter provided and that Pray be required to file an undertaking as hereinafter ordered and conditioned.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 2 to Pray's FPC Gas Rate Schedule No. 1.

(B) Pending such hearing and decision thereon, said supplement be and it hereby is suspended and the use thereof deferred until October 7, 1958, and until such further time as it is made effective in the manner hereinafter prescribed.

(C) The rate, charge, and classification set forth in the above-designated supplement to Pray's FPC Gas Rate Schedule No. 1 shall be effective as of October 7, 1958; *Provided, however*, That within 20 days from the date of this order, Pray shall execute and file with the Secretary of the Commission the agreement and undertaking described in paragraph (E) below.

(D) Pray shall refund at such times and in such amounts to the persons entitled thereto, and in such manner as may be required by final order of the Commission, the difference between the presently effective rate and charge and the proposed increased rate and charge hereby allowed to become effective in the event the additional tax of one cent per Mcf levied by the State of Louisiana is for any reason held to be invalid. Should such additional tax eventually be held invalid and the State of Louisiana makes refund, with interest, of the tax monies collected pursuant to the said Act No. 8 of 1958, then, and in that event, a proportionate part of the interest so received by Pray herein shall be passed on and paid to the persons entitled thereto at such times and in such amounts, and in such manner as may be required by final order of the Commission. Pray shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rate or charge allowed by this order to become effective, for each billing period, specifying by whom and in whose behalf such amounts were paid; shall report (original and four copies), in writing and under oath, to the Commission quarterly, or monthly if Pray so elects, for each billing period, and for each purchaser, the billing determinants of natural gas sales to such purchasers and the revenues resulting therefrom, as computed under the rate in effect immediately prior to the date upon which the increased rate allowed by this order

becomes effective, and under the rate allowed by this order to become effective, together with the differences in the revenues so computed.

(E) As a condition of this order, within 20 days from the date of issuance thereof, Pray shall execute and file in triplicate with the Secretary of this Commission its written agreement and undertaking to comply with the terms of paragraph (D) hereof, signed and accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved, as follows:

Agreement and Undertaking of Max Pray (Operator) et al. To Comply With the Terms and Conditions in Paragraph (D) of Federal Power Commission's Order Making Effective Proposed Rate Change

In conformity with the requirements of the order issued _____, in Docket No. G-_____, Max Pray (Operator) et al. hereby agrees and undertakes to comply with the terms and conditions of paragraph (D) of said order, and has caused this agreement and undertaking to be executed, this _____ day of _____.

MAX PRAY (OPERATOR) ET AL.

By _____

Attest:

Unless Pray is advised to the contrary within 15 days after the date of filing such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(F) If Pray shall, in conformity with the terms and conditions of paragraph (D) of this order, make the refunds as may be required by order of the Commission, the undertaking shall be discharged; otherwise, it shall remain in full force and effect.

(G) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until the period of suspension has expired, unless otherwise ordered by the Commission.

(H) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTHRIE,
Secretary.

[F. R. Doc. 58-8348; Filed, Oct. 8, 1958;
8:49 a. m.]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circ. 570, Rev. Apr. 20, 1943, 1958, Supp. 193]

MUNICH REINSURANCE CO.

ACCEPTABLE REINSURING COMPANY ON
FEDERAL BONDS

OCTOBER 6, 1958.

A Certificate of Authority has been issued by the Secretary of the Treasury to the following company as a reinsuring company only on Federal bonds under Treasury Department Circular No. 297, July 15, 1922, as amended, 31 CFR Part

223. An underwriting limitation of \$703,000 has been established for the company.

Munich Reinsurance Company, Munich, Germany. (U. S. Office, New York, New York)

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F. R. Doc. 58-8349; Filed, Oct. 8, 1958;
8:49 a. m.]

[Dept. Circ. 570, Rev. Apr. 20, 1943, 1958,
Supp. 194]

STUYVESANT INSURANCE CO.

SURETY COMPANY ACCEPTABLE ON FEDERAL BONDS

OCTOBER 6, 1958.

A Certificate of Authority has been issued by the Secretary of the Treasury to the following company under the Act of Congress approved July 30, 1947, 6 U. S. C. secs. 6-13, as an acceptable surety on Federal bonds.

An underwriting limitation of \$459,000.00 has been established for the company. Further details as to the extent and localities with respect to which the company is acceptable as surety on Federal bonds will appear in the next issue of Treasury Department Form 356, copies of which, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Surety Bonds Branch, Washington 25, D. C.

State in Which Incorporated, Name of Company, and Location of Principal Executive Office

New York; The Stuyvesant Insurance Company, Allentown, Pennsylvania.

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F. R. Doc. 58-8350; Filed, Oct. 8, 1958;
8:50 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3074]

CORNUCOPIA GOLD MINES

ORDER SUMMARILY SUSPENDING TRADING

OCTOBER 2, 1958.

I. The Common Stock, \$0.05 par value, of Cornucopia Gold Mines being listed and registered on the American Stock Exchange; and

II. The Commission on July 25, 1958, issued its order and notice of hearing under section 19 (a) (2) of the Securities Exchange Act of 1934 (hereinafter called "the act") to determine at a hearing to be held September 2, 1958, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or to withdraw, the registration of the common stock of Cornucopia Gold Mines (hereinafter called "registrant") on the American Stock Exchange for failure to comply with section 13 of the act and the rules and regulations adopted there-

under, and for failure to comply with the disclosure requirements of Regulation 14 adopted pursuant to section 14 (a) of the act.

On September 22, 1958, the Commission issued its order summarily suspending trading of said securities on the exchange pursuant to section 19 (a) (4) of the act for the reasons set forth in said order to prevent fraudulent, deceptive or manipulative acts or practices for a period of ten days from the date of the aforesaid order.

III. The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on the American Stock Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion that such suspension is necessary in order to prevent fraudulent, deceptive, or manipulative acts or practices, with the result that it will be unlawful under section 15 (c) (2) of the Securities Exchange Act of 1934 and the Commission's Rule X-15C2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, such security otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19 (a) (4) of the Securities Exchange Act of 1934, that trading in said securities on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive, or manipulative acts or practices for a period of ten (10) days, October 3 to October 12, 1958, inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 58-8343; Filed, Oct. 8, 1958;
8:48 a. m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 202]

TEXAS

DECLARATION OF DISASTER AREA

Whereas, it has been reported that during the month of September 1958, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Texas;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7 (b) of the Small Business Act may be received and considered by the offices below indicated from persons or firms whose property situated in the following county (including any areas adjacent to said county) suffered damage or other destruction as a result of the catastrophe hereinafter referred to:

County: Presidio (Floods occurring on or about September 26 through 29, 1958).

Offices: Small Business Administration Regional Office, Fidelity Building, 1000 Main Street, Dallas 2, Tex. Small Business Administration Branch Office, Kallinon Building, Room 412, 434 So. Main Avenue, San Antonio 5, Tex.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to March 31, 1959.

Dated: September 29, 1958.

WENDELL B. BARNES,
Administrator.

[F. R. Doc. 58-8344; Filed, Oct. 8, 1958;
8:48 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 6, 1958.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35004: Coarse grains to points in Arkansas. Filed by Southwestern Freight Bureau, Agent (No. B-7388), for interested rail carriers. Rates on coarse grains and articles taking the same rates, carloads, as described in the application from points in western trunk-line territory to points in Arkansas on the Warren & Ouachita Valley Railway Company.

Grounds for relief: Short-line distance formula.

Tariff: Supplement 39 to Southwestern Lines tariff I. C. C. 4241.

FSA No. 35005: Soybeans in Western Trunk Line Territory. Filed by Western Trunk Line Committee, Agent (No. A-2019), for interested rail carriers. Rates on soybeans, carloads, between points in western trunk line territory.

Grounds for relief: Short-line distance formula and motor truck competition.

Tariff: Supplement 458 to Western Trunk Line tariff I. C. C. No. A-4254.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 58-8342; Filed, Oct. 8, 1958;
8:48 a. m.]









